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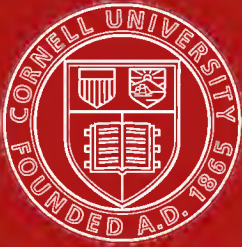
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PUBLIC INTERNATIONAL UNIONS

THEIR WORK AND ORGANIZATION

A STUDY IN
INTERNATIONAL ADMINISTRATIVE LAW

BY

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TO
MY PARENTS
WHOSE DEEP INTEREST IN OLD WORLD AFFAIRS
FIRST LED ME TO THINK ABOUT THE
BROADER LIFE OF HUMANITY

PREFACE

The relations between independent states have been, during recent times, assuming such a character that our traditional ideas of international law are in need of revision ; or it might be better to say that we are witnessing processes and developments in international life which are adding new areas to the domain of international law. Such, for instance, is the rapid growth of international procedure in extradition, in the presentation of claims, and especially in arbitration. Another important new phase of the subject is the organization and administration of public unions in which certain economic, social, or scientific interests are dealt with on the basis of world-wide relations. The technical and industrial advance which characterizes our era has already brought about an internationalism, which is slowly and carefully being embodied in the forms of political organization. It is this latter subject to which the present volume is intended to afford an introduction. Within its space only summary treatment of the individual unions is possible ; but the time will soon be ripe for a detailed study of this new international administrative law in all its manifold forms and applications.

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PAUL S. REINSCH

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PUBLIC INTERNATIONAL UNIONS

CHAPTER I

INTRODUCTION

[THE NEW INTERNATIONALISM¹

Among men of affairs the generous ideal of world unity and peace is still commonly looked upon as a golden dream. The historic experience of generations has accustomed men to think in terms of national sovereignty, and to see in national life, rich with the color of varied experience, the final form of human civilization. It seems to accord with what is called the ineradicable basis of human nature that national differences should exist and that they should express themselves in mutually exclusive fashion. So the thought of world unity seems to lack relation to actual facts; it is at best a guiding hope, a generous aspiration by which the harshness of competition and strife may, in ordinary times, be smoothed over a little. Even the men who are called to do the constructive work in international relations often accept the idea of universal peace only as "the bright star which we shall never reach, though it will always guide us,"—to use the words of the president of the second Hague conference. This platonic enthusiasm frequently found among men of action may be accounted for partly by the trained conservatism of their nature, which leads them to take only one step at a time and never to rush with outspread arms toward an ideal which their souls might divine, but which their caution views with doubt. But more specifically their attitude is due to the fact that in the past the ideal of peace has assumed the character of a poetical abstraction,—a prophetic vision of a new world,—devoid of direct relation to the living facts and pulsating energies of

¹ Reprinted, in part, from the *Forum*, July, 1909.

actual existence. Based upon the formal and abstract concept of humanity developed by the rationalism of the eighteenth century, it has assumed men capable of cutting loose from all the customs and interests of their traditional life, and to be directly, as reasoning beings, impelled to world-wide unity. The world state above, the rational individual below, and between them nothing but an exalted enthusiasm to uphold so vast a structure. It is, indeed, the privilege of human existence that we may be roused and impelled by generous appeals; but to lift all the conditions of our being to a higher plane, abandoning the inherited customs and institutions,—that involves more complex activities and changes than the mere acceptance, intellectually, of an exalted thought. The true constructive force was wanting in the older cosmopolitanism; in its attempt to create a new basis for human life it cast aside and spurned all the relations and institutions in which our national and communal life has had its being. But man lacks the constancy of effort to hold himself permanently upon the height of a purely rational ideal; his nature must be raised through many degrees of institutional life, from the narrow limits of personality, to the broad aims of civilization.

These thoughts are suggested as we compare the pacifism and cosmopolitanism of the recent past with the world-organization movement of the present. Our age is realistic and practical; its concepts are positive and concrete. The high ideals which it is conceiving are viewed not as cloud castles but as mountain tops soaring aloft in untarnished beauty, yet resting upon an immovable and massive foundation. As we look upon human life in its complexity we appreciate the value of all those forms of association, local and national, which the past has so laboriously evolved. It is not for us to throw them on the rubbish heap of worn-out machinery. They are forms of life which manifest themselves independently of our theories. So we recognize their validity and seek a way to transform the social and political energies thus concentrated, for the accomplishment of still higher aims. The barren ideal of no war, no patriotism, no local interest, has given way to a potent centripetal force. We are building up coöperation in constantly widening circles, so that it transcends national bounds to become a universal joint effort. We seek not so much to establish an abstract ideal as to work together in all the varied and absorbing interests and pursuits that occupy mankind.

World-wide coöperation in all human activities, each interest expanding its field of action until it has filled the limits of the globe,—that is the tendency of to-day. Universal coöperation is the watch-word which stands for positive action, for the development of concrete facts in human life corresponding to the actual needs of our economic and social order. For this purpose adequate institutions must be created to take international action out of the field of resolutions and to make it a part of the realities of human life. The void which the old cosmopolitan ideal left between the individual and humanity is thus being filled by the creation of living institutions through which the individual may gradually learn to coöperate, in many groups, with all his fellow men.

The most important fact of which we have become conscious in our generation is that the unity of the world is real. The most remote regions are being made accessible. The great economic and financial system by which the resources of the earth are being developed is centralized. The psychological unity of the world is being prepared by the service of news and printed discussions, by which in the space of one day or week the same events are reported to all the readers from Buenos Aires to Tokyo, from Cape Town to San Francisco. The same political dramas evoke our interest, the same catastrophes compel our sympathy, the same scientific achievements make us rejoice, the same great public figures people our imagination. That such a unity of thought and feeling is drawing after it a unity of action is plainly apparent. Our destiny is a common one; whatever may happen to the nations of Africa and Asia affects *our* life. Should great national disasters devastate or wars disorganize these distant societies, we ourselves must bear a part of the burden. Nor is there any development or advance in the perfective arts of civilization, the conditions and processes which make industry profitable and life agreeable, but we ourselves shall share in the benefits. Science knows no national boundaries. What is achieved in Berlin, Paris, or Rome to-day is to-morrow a part of the scientific capital of all the world. The positive ideal of our day is undoubtedly that the whole earth shall become a field of action open to every man, and that all the advantages which may be secured by the efforts of humanity shall accrue to the citizens of each individual nation. In this new grouping of social and economic life the national state will indeed continue to

hold a prominent place, but public and associative action will be dominated by forces and considerations which are broader than national life. Coöperation is the key to life and society. Neither the individual nor the nation is self-sufficing. There is a broader life ; there are broader interests and more far-reaching activities surrounding national life in which it must participate in order to develop to the full its own nature and satisfy completely its many needs. Even as the individual receives from society both protection and stimulus, so the nation would suffer intolerable disadvantages were it to exclude itself from world intercourse.

But if we have not intently followed the recent development of international affairs, we may be inclined to regard these things as important elements, indeed, in human thought, but not as productive of efficacious action. Yet the realm of international organization is an accomplished fact. The idea of cosmopolitanism is no longer a castle in the air, but it has become incorporated in numerous associations and unions world-wide in their operation. Nor are these merely represented by congresses where tendencies and aims are discussed and resolutions voted. No, they have been provided with permanent organizations, with executive bureaus, with arbitration tribunals, with legislative commissions and assemblies. Of international unions, composed of private individuals united for the advancement of industry, commerce, or scientific work, there are no less than one hundred fifty, all furnished with a permanent form of organization. But the national governments themselves have recognized the necessity for international action and have combined among themselves to further all those activities which cannot be adequately protected or advanced by isolated states. There are in existence over forty-five public international unions, composed of states. Of these, thirty are provided with administrative bureaus or commissions. As the active cause for this development in modern civilization is rapidity and safeness of communication and transport, it is natural that the interests of these activities should have received a world-wide organization in unions for postal, telegraphic, and railway communication and for the protection of the means and methods employed by them. No state can completely protect itself against the inroads of epidemic disease nor against the plottings of criminals without the coöperation of other governments. Unions have thus been established for mutual police

assistance and for the development of international sanitation. In order that industrial competition may be raised to a plane where the individual laborer or manufacturer is sheltered against intolerable conditions, nations unite and follow a common plan of economic and labor legislation. For the ample development of such interests there have been founded the International Institute of Agriculture, the International Association for Labor Legislation, and many semipublic associations designed to realize the idea of a world unity in the great field of economic life. But we must not proceed to an enumeration. It is only our purpose to point out the significance of these great positive movements. When once we appreciate the scope of the forces involved, we are impelled to the conclusion that world organization is no longer an ideal but is an accomplished fact. The foundations in international life have been laid by the slow working of economic and social causes, guided by the conscious will of man, but responding to and logically expressing the deepest needs of human life.

Effectual internationalism respects political and ethnic entities as essential forms of social organization within their proper limits, just as the modern state respects the autonomy of towns, provinces, and member states. We are not able to dispense with the traditions of orderly development, with the psychic unities which lie back of national sovereignty and give it force. While, indeed, looking far beyond any narrow and exclusive policy, positive internationalism is equally averse to any attempts artificially to create a world state, either by the deadening force of military empire or by mechanical construction. But if this great force is not hostile to national community, it is plain, on the other hand, that the time is past when any nation can expect to prosper, or even exist, in a state of isolation. International coöperation has become an absolute necessity to states, along all the various lines of national enterprise. National independence must not be interpreted as equivalent to national self-sufficiency, nor ought we to think of political sovereignty as enabling a nation to do exactly what it pleases without regard to others. Though such a power may be found in the abstraction of law, among men acting with wisdom and foresight it does not as a matter of fact exist. The normal state is, by the circumstances of modern life, compelled to international coöperation. By cutting itself off from international intercourse and from the unions, it would be depriving its citizens of advantages to which they

are entitled as men living in the civilized world of to-day. It is not outside of, but within, the great international society of the world that states will advance and develop what is best in their individuality. This should be borne in mind especially by us, citizens of a rich and powerful republic, which is at times inclined to forget that its policy must consider world-wide conditions and duties. Thus it has become clear that in all matters of actual life states are interdependent. International law is the expression of this interdependence, and in our days this great science is taking on a new form in response to the new situation in the world. The abundance of close relations and joint activities permanently established among states, in recent decades, is most impressive to the careful observer. The older treatises gave most attention to the state of war; in the future the relations of peace will occupy three fourths of the space and attention. The law of war will sink to the relative unimportance which criminal procedure holds in municipal law systems. This vision of world-wide coöperation is indeed inspiring and grateful. Its beauty and strength rest on the fact that millions are working together quietly, in the pursuit of their various living interests, toward the organization of world unity. It is not a thing imposed from above by force, or dictated only by a higher rationalism, but it is the almost instinctive work of active men building wider and wider spheres of affiliation.

By a strange but not uncommon paradox, the very age that sees this striking growth of world-wide enterprise is also the witness of an insensate competition in military armament. In one of his poems the emperor of Japan says, "In this age, when in the entire world we believe ourselves brothers, why then should the tempest rise with so much force." Yet we are here not in the presence of a deep contradiction. The spirit of our age expresses itself in a desire for energetic action, for strong personality, for positive deeds and achievements. There is a generous stirring of enthusiasm, a new idealism in act and thought. But it cherishes not a pale and silvery hue of life; it demands character, force, and action. According as this force will be directed it will express itself in bitter national combats or in wonderful international construction. But action it demands. It is here that the older pacifism was weak. The ideal of rest, of quiet, of *not* arming, of *not* struggling, does not arouse this age as does the call to action. But once let internationalism be presented as the most far-reaching, the

most promising action, — action full of difficulty, calling for strength and devotion, — and it powerfully appeals to the spirit of the age. Let us vow that this creative energy shall counteract the desire to waste the inheritance of civilization in bloody and destructive war.

The warlike spirit presupposes a misunderstanding of the motives and aims of other nations. How can we key ourselves to the dread purpose of taking the life of fellow beings, unless our feelings are worked upon by the idea that they are antireligious, despotic, immoral, cruel, — in a word, enemies of civilization? But will such designs be conceived by a merchant against those with whom he has sat in an international body, discussing the interests of commerce and industry? Will a physician desire to kill the sanitary official in coöperation with whom he is protecting his nation from the inroads of epidemic and plague? Will the man of science conceive a murderous craving to take the life of those who are searching for the truth in the laboratories of Germany or of France? War becomes criminal, a perversion of humanity, in such cases. There is no high ideal which can be appealed to for the killing of those with whom we coöperate in the work of making the world a better place.

The older pacifism was of a purely negative character. It looked upon war as an evil entity to be combated directly. Yet war is only the symptom of a general condition in which too great emphasis is still laid upon local interests. It is evident that the only effective manner to remove the conditions to which the occurrence of war is due, lies in the building up of an international consciousness; but such a consciousness cannot arise out of nothing — there must be back of it a development of actual unity in interest and feeling. We must realize our interdependence in practical affairs. It is through the creation of international organizations for all the interests of human life that a positive content of the feeling of a common humanity is being provided. The incentive to war will become weaker and weaker as the bonds of community between nations increase, such as are provided by communication agencies, by economic and industrial ties, or by scientific coöperation. How intolerably painful will be the ruthless interruption of all such relations and activities! There are but two alternatives: either the ties which are thus being created will in time become so strong that no nation will be reckless enough to sunder them; or, should war continue to exist, these relations will have to be

exempted from its operations. Such an exemption will tend to reduce the sufferings and dangers of war more and more, and would thus be in itself a boon to humanity.

Universal coöperation is the future ideal. The world is full of conditions and activities in which nations are not self-sufficing, in which we instinctively look beyond the boundaries of the national state. The nation that would be independent in isolation will condemn itself to be a Venezuela,¹ will cut itself and its citizens off from the advantages of civilization to which all human beings are entitled. But, recognizing interdependence with the other civilized nations of the world, a state strengthens itself as does the individual who plunges with full energy into the life of his community, being stimulated thereby and having all his faculties developed. The great fact that the world is a unit rests upon the underlying conditions of modern invention and science, which the dictum of no national government can destroy. International coöperation points out the only way in which humanity may continue to develop without wasting its energy and ultimately falling a prey to triumphant militarism. Between such alternatives it is not difficult to choose; indeed, it is almost impossible to believe that mankind should be so perverse and misguided as to prefer much longer the waste and suffering of military competition to the joy of normal activity,—the development of all that is great and strong through international coöperation. On the one hand lies barbarism, on the other the certainty of continued progress.

A study of the development of political thought during the modern era seems to reveal a sharp conflict between the nationalist and the humanitarian view. In forming their ideas about public life, men side either with Machiavelli, to whom the state, self-sufficient and untrammelled by moral considerations, is the sole end of existence; or with Grotius, who builds his system upon the unity of mankind. In the footsteps of Machiavelli follow Hobbes, Burke, and the historical school, while Grotius is the intellectual ancestor of the believers in a rationalist policy, like Locke, Rousseau, and the modern Liberals. At the end of the nineteenth century the conflict between these tendencies seemed peculiarly acute. There was a recrudescence of Machiavellian craft and cynicism. But at the same time nationalism, with its ideas of self-sufficiency and independence, its reliance upon force,

¹ This was written in the days of Castro.

its desire for expansion, was confronted by the ideal of a broader humanity, softening discords and banishing feelings of hatred through a common belief in the essential unity of human life and civilization.]

It is a significant fact that, at the very time when the ideas of a common humanity have received such strong expression and have been given so tangible an embodiment as in the recent conventions on joint action, we should also be witnessing an extreme effort of nationalism in the continued and growing armaments and the increasing keenness of international competition. But this contrast indicates a deeper harmony. We are not here dealing with two forces that are at all times antagonistic and mutually destructive; quite to the contrary, they are contained in each other. With all their apparent conflict they are intimately related, so that in the present stage of the world's history a strengthening of the one seems directly to stimulate the other. It was in nationalism that humanity first became conscious of its own aims and destinies. The Greek city, truly national, though politically and socially much narrower than the modern state, was the beginning of all humanitarian civilization. The strength of nationalism lies in its power of self-limitation, of individualizing humanity; but its aim is, after all, humanity and not any narrower interest. Just as in state-life itself, aims must be national,—not local or particularistic, or we should have an intolerable rule of factions,—so in the life of the world, aims ought to be not narrowly national but humanitarian in the creative sense. This is a moral, but also an actual and inherent, necessity. An implied homage to this principle is constantly paid by nations when they make humanitarian professions of policy. Nor are such declarations a mere deceitful pretext. They indicate a fundamental identity between the aims of humanity and those of the national state.¹

¹ The idea of the development of internationalism and its compatibility with the existence and strength of the national state is thus expressed in the prospectus of the German association for the mutual understanding among nations, of which a number of the most important international jurists were the founders:

"At one time the problem and aim of our people was to establish the national state. We know what progress, especially on the field of industry, is due to its creation; but a new era brings new demands. Already our technical development has brought about an epoch of internationalism; yet the political organization of the world has fallen behind through its lack of legal relations between the individual states. While we now may cross the continent from the Atlantic to the Pacific Ocean in an uninterrupted railway journey, while the sea between England and the continent has become virtually a bridge, the nations of the world confront each other

When these considerations are clearly grasped, it will be seen that the law of nations addresses itself primarily to the great national powers, and that, though they seem to have the largest opportunity of breaking it, they will be, by their very nature, most prone to respect its principles. The ideal of a complete national life implies aims that transcend national boundaries. The great powers are the heirs, jointly and individually, of the world-state dreams of Rome and the Middle Ages. They are the heirs, too, of a common civilization that has descended to us from the older centers of human activity. The justification of their existence lies solely in their power to establish and advance the complete life of their citizens upon the basis of humanity. Thus the very ambitions of every great world power directly impose on it aims and policies that may truly be called humanitarian in scope and essence. It is only the underdeveloped, the out-of-the-way, half-civilized states that do not feel the pervading influence of these world-wide forces expressing themselves in international action and international law. How different it is with the great powers. The very condition of their being demands the acknowledgment of broader relations and broader duties than their mere territorial entity would indicate. Thus the sanction of international law flows not so much from a contractual arrangement for coöperation or joint action, but from the fact that the essential nature of the national state is humanitarian, and that even in spite of itself it is forced to adhere to those principles of polity which express themselves in a developing rational law created from the point of view of a common humanity. International coöperation is therefore not something that the nations agree to on account of extraneous pressure or by reason of a passing accession of humanitarian enthusiasm. On the contrary, it is the

armed to the teeth. Whoever is devoted to national culture will be ready to consider what a flowering and fruiting of civilization could everywhere be brought about were it possible to initiate an era of mutual understanding in international politics. The present race in armaments will speedily lead to ruin. To-morrow it may be necessary to add to armaments on land and sea, the maintenance of which impose a crushing burden, an armada of the air. But is it not possible to combine with the idea of nationalism that of international organization? Did not the founders of the Empire find a mediating policy between legitimism, the maintenance of the sovereign dynasties, and nationalism, which demanded a German union? A similar conciliation between nationalism and internationalism has been begun and must be carried out. We must strive for the establishment of a different political system in the intercourse among nations."

Signed by Jellinek, v. Liszt, Nippold, Piloty, Schuecking, and v. Ullmann.

result of a national life which has come to realize its humanitarian implications. Those who hope for a developing internationalism need not fear the present strength of national impulses. The more nationalism itself becomes conscious of its true destiny and its effective aims, the more will it contribute to the growth of international institutions. Great nations and responsible statesmen will gladly take part in building new and ampler mansions for human life and industry, and in discovering and establishing means by which the energies of our race may be turned into fruitful work for the betterment of civilization in all its aspects.

CHAPTER II

[THE DEVELOPMENT AND ORGANIZATION OF INTERNATIONAL UNIONS¹

The dominant note of political development during the nineteenth century was undoubtedly nationalism, and the political forces of the century, intricate and involved as their action was, may be understood and analyzed with the greatest clearness from the point of view of the struggle for complete national existence and unity which was going on in all the principal countries of the earth. Nations are readily personified, and there is a unity and sequence in their action which makes it appear very concrete when compared with other political influences and movements. Thus toward the end of the century, after the great struggles in the United States, Germany, and Italy had been decided in favor of the national principle, it seemed as if the latter were bound to exercise an almost exclusive sway over the future destinies of humanity, — as if the twentieth century would be taken up with a fierce economic and military competition among the nationalities who had achieved a complete political existence. Under such conditions diplomacy and international action would have had for their main function the maintenance of a political balance or equilibrium which would prevent the undue aggrandizement of any one state or nation. Such, indeed, had been the original and continuing purpose of diplomatic action.

Yet, notwithstanding the definiteness and energy with which the action of nationalism asserted itself in nineteenth-century politics, the force of its current was all the time being diminished and its direction modified by that other great principle of social and political combination which we may call internationalism, and which comprises those cultural and economic interests which are common to civilized humanity. During the Middle Ages the unity of civilization rested largely upon a cultural and religious basis. In our own age

¹ Reprinted, with copious changes and additions, from the *American Journal of International Law*, July, 1907.

such bonds of union have been powerfully supplemented by the growing solidarity of economic life throughout the world, as well as by the need in experimental and applied science to utilize the experience and knowledge of all countries. The existence of such an underlying economic unity of the civilized world has been borne in upon the nations with greater force every succeeding year. The development of the facilities for communication, bringing with them a great increase in the intercourse and exchange of commodities among nations, first convinced the latter of the need of international arrangements of an administrative nature. The inconveniences and delays caused at the point of transit from one national territory to another by the existence of different administrative methods and harassing regulations were such a serious impediment to the natural currents of trade that they could not long be tolerated. It was thus that a strong demand arose for the regulation of the international telegraph and postal service, of transfer of freight on railways, and, in general, of all matters affecting international communication. It is not difficult to see the impulse toward joint action which would arise from relations such as those mentioned.

Other interests, such as manufacturing and insurance, while sensitive to the importance of international economic relations, were not so directly and inevitably affected as was transportation. Yet in these fields another principle became powerfully active, inducing nations to seek for a coöperative procedure in matters of industry and other economic enterprise. This principle is found in the need of raising the level of competition. It was soon discovered that after a nation had, within its territory, introduced some improvement in the condition of its industries and its labor, such as required an additional expenditure of money, its industries might, at least for a while, be seriously threatened by the competition of those countries in which such regulations had not as yet been adopted. The industrial interests which might at first have opposed the introduction of such measures of protection now became eager partisans of their extension to competing nations by means of treaties and administrative arrangements. The international movement for improving industrial and social conditions therefore found powerful support not only among men who had originally favored such reform, but among those interests which, through its introduction in certain nations, had

been placed in a position of disadvantage in international competition. This is the ground for international action in matters affecting agriculture, labor, sugar production, and similar economic activities. Closely allied to this development and preceding it in time is the movement for the international protection of patents and copyrights.

A third cause for international action arises where a number of nations find themselves threatened by conditions existing in less civilized countries, and also where the instrumentalities and processes of their economic activities extend upon the seas beyond national jurisdiction. Thus the safeguarding of public health against the importation of epidemics, and the protection of submarine cables in high-sea areas became the subject matter of agreements for international administrative action.

Civilized nations, being desirous of conducting their affairs in the most scientific and effective fashion, feel the need of making use of experience and knowledge wherever they may be found. Recognition of the fact that no people has a monopoly of the best scientific and administrative processes has led the nations to seek opportunities for the interchange of experience such as are afforded by congresses of experts in various fields of public activity. Many of the unions formed more directly for administrative purposes also incidentally act as centers for the exchange of reliable information.

The number and extent of the international activities already entered upon are surprising. It is not so much the case that nations have given up certain parts of their sovereign powers to international administrative organs, as that they have, while fully reserving their independence, actually found it desirable, and in fact necessary, regularly and permanently to coöperate with other nations in the matter of administering economic and cultural interests. Without legal derogation to the sovereignty of individual states, an international *de facto* and conventional jurisdiction and administrative procedure is thus growing up, which bids fair to become one of the controlling elements in the future political relations of the world.]

In order to give an adequate account of these important movements a monographic study of each of them would be necessary. No more will be attempted in the present chapter than to give an indication of the main historical facts concerning the formation of these various unions, and the conventions upon which they rest.

Special attention will be given to the initial difficulties in the way of reaching such agreements, and to the manner in which those existing were, as a matter of fact, concluded. The diplomatic and administrative agencies employed in the formation of these unions, or created for their purposes, will be reviewed, as well as the influence of private initiative and associated effort in bringing about joint action by the governments. We shall also note the functions attributed to the international organs, and the main administrative principles and methods established. The present chapter will be confined to a brief account of the various unions from these points of view. A more thoroughgoing analysis, critical and comparative, of the arrangements and institutions thus established, viewed in their relation to general international law and to the administrative systems of the individual states, will be given in the fifth chapter.¹

I. COMMUNICATION

*The Telegraphic Union*² (*L'Union des administrations télégraphiques*). The first important international administrative union to be established was the telegraphic union. From 1849 on, treaties had been made between individual European states concerning telegraphic communication. In 1850 an Austro-German telegraph union

¹ General references: Poincard, L., *Droit international conventionnel*, 1896; *Le droit international au XX^e siècle*, Paris, 1907. Moynier, G., *Les bureaux internationaux*, Geneva, 1892. Kazanski, P., *The General Administrative Unions of States* (in Russian), Odessa, 1897. Kazanski, "Die allgemeinen Staatenvereine," in *Jahrb. d. internat. Vereinigung*, Vol. VI, Berlin, 1904. Descamps, *Les offices internationaux*, Brussels, 1894. Lavollée, "Les unions internationales," in *Rev. d'hist. dipl.*, Vol. I, p. 331. Fiore, "L'organisation juridique de la société internationale," in *Revue de droit international*, 1899, pp. 105, 209. Olivart, Marqués de, *Tratado de derecho internacional público*, Vol. II, Madrid, 1903. Ullmann, *Völkerrecht*, p. 282. Field, D. D., *Draft Outlines of an International Code*, 1872. Oppenheim, L., *International Law*, Vol. I, 1896. Schücking, W., "L'organisation internationale," *Revue générale de droit international*, Vol. XV, p. 5. Nippold, O., *Verfahren in völkerrechtl. Streitigkeiten*, chap. i, Leipzig, 1907. *Annuaire de la vie internationale*, A. H. Fried, ed., Brussels, contains valuable data on international unions. Edition 1908-1909 contains the organic laws of most of the unions, public as well as private.

² Fischer, P. D., *Die Telegraphie und das Völkerrecht*, Leipzig, 1876. Saveney, E., "La télégraphie internationale," *Revue de deux mondes*, September and October, 1872. Renault, L., *Rapports internationaux. La poste et le télégraphe*, Paris, 1877. Carmichael, E., *The Law relating to the Telegraph, the Telephone, and the Submarine Cable*, London, 1903. Kazanski, P., "L'union télégraphique internationale," *Revue de droit international*, 1897, p. 451. Meili, *Die internationalen Unionen*, etc., Leipzig, 1889. Rolland, L., *De la correspondance postale et télégraphique*, 1901. *Journal télégraphique*, Bern, since 1869. *Archiv f. Post u. Telegraphie*, Vol. XXXII, pp. 65-89. *Treaties in Archives diplomatiques*.

was organized ; another union embraced France, Belgium, and Prussia ; and through the convention of October 4, 1852, at Paris, all continental states which at that time had state telegraphs regulated the mutual relations of their services. Through such conventions as these the international relations in this matter were made more satisfactory, without, however, securing that uniformity and regularity which the interests of the various nations really demanded. The desire to attain such uniformity by a universal union led to the convening of a conference at Paris in 1865. Twenty states were represented by their diplomatic agents at Paris, assisted by expert delegates. The conference, therefore, had the double character of a diplomatic congress and a meeting of expert representatives of the various administrations. The results of the work of the conference were, in accordance with this double character, divided into a convention, or treaty, signed by the diplomatic representatives, and a *règlement* controlling the administrative details, which was signed by the expert delegates. These conventions resulted in a great simplification of the international service as well as in a considerable reduction in the tariff rates. Many difficulties of local opposition had to be overcome before an agreement could be reached. The discussions of the conference are of exceptional interest, as it constitutes the first important attempt to arrange for permanent coöperation between sovereign states in administrative matters. As a precedent for international action, the conference of Paris must be accorded a very high importance. The telegraphic union which was thus formed embraced all the states represented, and to these were added, during the subsequent three years, eight other states and colonies.

The first regular conference of the union took place at Vienna in June, 1868. The double nature of the conference — composed of diplomatic and technical representatives — was preserved on this as well as on subsequent occasions. Five more members were admitted at this time, including the telegraph administration of British India. The most important act of the conference of 1868 was the establishment of a bureau having its seat at Bern, and acting as a central organ of the union. At the conference at Rome, in 1871, representatives of important private telegraph companies were admitted as advisory members. The conference at St. Petersburg (1875) recast the constitutional form of the union by distinguishing more carefully

between the matters to be dealt with in the diplomatic convention and those to be included in the *règlement*. <The convention was made, in a way, the constitution of the union, laying down the fundamental principles which were accepted as expressing the essential relations and duties of the members and the permanent basis of the administration. The *règlement*, on the other hand, was composed of those administrative regulations by which the details of the administration were fixed, and which were susceptible of gradual modification, corresponding to changes in the character of the administrative relations.> A similar basis of division had been used the preceding year in the formation of the general postal union. Among the matters which were laid down by the convention are the general classification of telegrams, the admission of cipher dispatches, conditions of suspending the service, and the right of declining responsibility for loss. The details of the tariff and the application of the above rules are fixed by the *règlement*.

Among the principles established by the convention, the following are of general interest: the secrecy of correspondence is to be guarded; the governments do not admit any responsibility on account of the service of international telegraphy, particularly for damages caused by delay in delivery of messages; special wires are to be used for the international service. Telegrams are divided into three classes, — state telegrams, service telegrams, and private telegrams. <The contracting parties reserve the power to stop the transmission of every private telegram which may seem dangerous to the state or contrary to its laws; when judged necessary, the telegraph service may be suspended entirely or partially.> The convention further established the central organ or bureau mentioned above, and laid down a definite basis for international tariffs of charges. <Periodical administrative conferences are to be held for the purpose of revising the convention and the *règlement*; in the deliberations, each public telegraph administration has the right to one vote. The revisions decided upon by the conference do not come into force until they have received the approbation of all the contracting states.>

<The telegraphic union is at the present time composed of forty-eight states and colonies. Its regulations are observed also by the submarine cable companies. The union comprises all the important countries of the world with the exception of the United States, China, Mexico,

Peru, and Canada. It is likely that China will be a member before long. As only a very small fraction of the telegraph lines in the United States is under federal control, the government is not in a position to fulfill the main requisite to becoming a member of the union, namely, "being in a position to insure the general acceptance of the principles and rules of the international telegraph conference on the part of the private companies within its territory." Hence the repeated invitation to become a member has had to be declined. The American government has however been represented at the recent conferences of the union by delegates who are accorded the right to speak, but who do not vote.

The great increase in telegraphic communication in the last quarter century is shown in the following table from a United States government report, giving the combined statistics of all the countries in the union :

	Domestic telegraphs	International telegraphs	Total
1868	19,961,925	5,678,405	25,640,338
1885	132,090,116	13,339,742	145,429,858
1905	310,201,679	82,196,656	392,398,335

In 1868 the telegraph lines of the countries belonging to the telegraphic union (including cables) had a total length of 135,378 miles ; in 1885 it had increased to 407,997 miles ; and in 1905, to 786,340 miles.

The international telegraphic bureau began operations on January 1, 1869. It is under the supervision of the Swiss government, and its expenses are met by the states in proportion to the importance of their telegraphic intercourse. Its original budget allowance was only 50,000 francs a year, of which, as a matter of fact, only 65 per cent on an average was used during the earlier period. The conference at St. Petersburg increased the budget to 60,000 francs, and it now stands at 100,000 francs a year. The attributes of the bureau as determined by the convention are as follows : It is to collect information concerning international telegraphy ; to give due form to demands for changes in the tariffs and in the service regulations, and to give notice of such changes ; and to make special studies and investigations when so directed by the conferences of the union.

The *règlement* provides that the various telegraphic administrations shall keep each other informed, through the intermediary of the bureau, of all changes and improvements in their service and of interruptions in communication. They shall also furnish to the bureau all statistical information, so as to enable it to issue a complete annual account of the international telegraphic services. At the periodic conferences of the union, a program, worked out beforehand under the initiative of the state where the conference is to be held, and in consultation with the other governments interested, forms the basis of discussion. Committees are appointed to consider in detail the various propositions. The resolutions of the conference are not binding until accepted by all the administrations of the contracting states, although for their adoption by the conference only a majority vote of the delegates present is necessary. A change of the fundamental convention would of course require the diplomatic action of all the treaty powers. It is a general principle illustrated by the telegraphic union that in such combinations the sovereignty of each member demands that an important act of the union should be undertaken only by unanimous consent; but the members of the union, of course, remain free to conclude among themselves special agreements, not conflicting with the general treaty, which their special situation and interests may require. Should certain members refuse to accede to the establishment of a proposed reform, those desiring the change may form a *restricted union* for such special purpose.

*Wireless telegraphy.*¹ The invention of wireless telegraphy raised many novel problems in international law and administration. The legal questions involved are of great interest, even when considered only from the point of view of an individual sovereignty, but as telegraphy is an operation which is an essential part in the intercourse between nations, the method and manner of telegraphic communication and the rules regulating it could not have been satisfactorily settled without resorting to international agreement. As there had been an attempt on the part of Great Britain to build up a radiotelegraphic

¹ Meili, T., *Die drahtlose Telegraphie*, Zurich, 1908. Landsberg, A., *Die drahtlose Telegraphie*, Marburg, 1909. Fauchille, P., "Le régime aérien, etc.," *Revue générale de droit international*, Vol. VIII, p. 414. Rolland, *La télégraphie sans fil*, *Revue générale de droit international*, Vol. XIII, p. 58. Lorentz, *Les câbles sous-marins et la télégraphie sans fil*, Nancy, 1906. Docum. de la conférence radiotél. de 1906, Berlin. Report of Select Committee, *Parl. Sess. Papers*, No. 246, London, 1907.

monopoly, other nations in self-defense favored an agreement by which such narrow control of an international service would be prevented. A preliminary conference on radiotelegraphy took place in Berlin in 1903. This was followed by a more formal conference in 1906, at which a convention was framed and adopted. The convention is accompanied by a protocol containing subsidiary arrangements, as well as a *règlement* defining more in detail the principles of the convention and laying down rules for the administration. The principal provisions of the convention are as follows: Coast stations and stations on ships are bound to exchange radiotelegrams without discrimination against any system. Wireless stations must accept appeals for aid from ships in distress in preference to any other messages. Inland stations must be connected with the coast stations by special wires. Naval and military stations can of course be maintained and they will not be subject to the duty of furnishing public service. The provisions of the convention and *règlement* may be changed by common accord among the contracting parties. Conferences of plenipotentiaries or simple administrative conferences shall take place periodically, the former dealing with the convention, the latter with the *règlement*. In these each country is entitled to one vote. Colonies or protectorates may be admitted to the union on their own account. A bureau is established, charged with furnishing every kind of information upon radiotelegraphy, giving notice of changes in the convention or *règlement*, and in general performing all administrative labors in the interest of international radiotelegraphy. In case of dispute between two or more governments concerning the interpretation or execution of the convention, the question may be submitted to arbitral decision. Each litigant then chooses another government as arbiter; if these do not agree, they may choose a third government as umpire. The Italian delegation, while signing the convention, made a reservation to the effect that their government could not ratify until the expiration of its contracts with the Marconi Company. In the end the conference did not create a separate bureau, but charged the telegraphic bureau at Bern to act as a central office of correspondence and information in connection with radiotelegraphy, and authorized it to spend 40,000 francs a year for this branch of the service.

The union for the protection of submarine cables will be taken up in connection with international police arrangements.

*The Universal Postal Union.*¹ The industrial and commercial development of the early nineteenth century brought with it a remarkable growth in postal business. The carrying of letters and other missives, originally a private enterprise, had been generally assumed by the various states during the second half of the eighteenth century, although it was only as recently as 1867 that the private postal service of the Thurn and Taxis family was taken over by the Prussian government. As the postal system of each state was an independent unit, and had practically no administrative relations with other postal services, there was a great complexity in arrangements and rates as far as international business was concerned. This was exceedingly cumbersome and constituted a great impediment to commerce. Not only were the rates of postage very high, but the tariffs were confused by the fact that the charges varied according to the respective route of transit. Thus, for instance, there were three different rates between Germany and Austria, five different rates between Germany and Australia, four different rates between Germany and Italy, according to the particular route taken by the letter. Postage between Germany and Italy, for instance, varied from forty-eight to ninety pfennings per letter. A letter from the United States to Australia would pay either five, thirty-three, forty-five, or sixty cents, or \$1.02 per half ounce, according to the route by which it was sent. Mail service was by no means frequent, but the fact that a letter was prepaid for a certain route often prevented it from taking advantage of a quicker means of communication. It might just have missed the mail for which it was prepaid, by a few hours, but would have to wait until another mail left by the same route before it would be forwarded. Charges in general were very high; thus the rate upon a registered letter between Berlin and Rome amounted to four marks and ten pfennings. In making up a through rate, the transit charges of every country whose administration handled the letter would be included. The accounts of such mutual charges were exceedingly complicated and it took a vast amount of clerical work to keep them balanced. Further difficulty was introduced through the difference in weights and in currency, all

¹ Weithase, H., *Geschichte des Weltpostvereins*, Strassburg, 1899. Rolland, Meili, *op. cit.* Schroeter, C., *Der Weltpostverein*, 1900. Krains, H., *L'Union postale universelle*, 1908. *L'Union postale*, Bern, since 1875. Treaties of October 9, 1874, June 1, 1878, and May 26, 1906, in *Archives diplomatiques*. *L'Union postale universelle*, published by the international bureau at Bern, 1900.

of which had to be taken account of in computing rates. It will be apparent from these few facts and examples that the service lacked that rapidity and cheapness which alone could make it a real influence in the development of world-wide business relations. A remedy could be created only through international action. Nor were treaty arrangements between individual nations sufficient to solve the problem. What was needed was an understanding between all the civilized nations of the world.

Beginning with the year 1802, a large number of conventions for the purpose of regulating postal communication were concluded by groups of two or more nations. After the middle of the century this international interest assumed such proportions that the establishment of a régime of uniform regulations appeared highly desirable. In 1862 the United States government officially took the lead in this matter; the Department of State called attention to the many inconveniences arising from the lack of unity, and suggested the holding of an international postal conference. Such a conference accordingly assembled at Paris in May and June, 1863, on which occasion fifteen states were represented; though its avowed purpose was not as yet to produce definite treaty regulations, but, on the basis of full and free discussion, to clear up the general principles which should dominate international postal administration. Many practical difficulties in the way of a unified system revealed themselves, especially in connection with the freedom of transit and the division of the proceeds from mail passing through two or more jurisdictions. In its resolutions the conference declared itself in favor of thirty-one principles, which covered, among other matters, the transmission of letters with declared value and of inferior classes of mail, a uniform system of tariffs, and the establishment of fixed transit dues.

In the subsequent decade not much progress was made, but in 1869 the German postal union began to negotiate for the calling of a new congress. The Franco-German War interrupted these negotiations, but they were taken up again at its conclusion, and finally Switzerland convoked a conference to meet in September, 1873. Russia and France at first indicated their unwillingness to take part in the enterprise. The French administration believed that the formation of a postal union would cause it severe financial loss on account of the lowering of transit charges. This consideration, combined with

the fact that the movement had been initiated by the German government, led to the reluctant attitude assumed by France. Public opinion and business interests, however, compelled her to join in the formation of a union, even at the loss of five million francs a year in postal income. Thus after a short delay Russia and France agreed to meet, and the conference finally came together on September 15, 1874. The points to be considered had been very carefully prepared by the German postal administration, under the guidance of Postmaster-General Stephan, and the conference, therefore, was enabled immediately to enter upon the discussion of specific problems of organization.

Twenty-two states were represented at the conference; the delegates were in most cases the heads of postal administrations, or high officials connected with the same. The excellence of the preparatory labors enabled the congress to finish its work in less than four weeks, and in this short time to create the constitution and regulations of the General Postal Union. As in the case of the telegraphic union, a convention fixed the general principles upon which the union and its administrative work are based, while details were worked out in a *règlement*. The leading principles established were the complete freedom of transit from one jurisdiction to another, and the creation of a practically unified postal territory comprising all the treaty states. It is, of course, necessary to distinguish between freedom and gratuitousness of transit. The latter could not possibly be established, for states of central location, like Belgium and France, had too large and direct a financial interest in the matter; but transit charges were reduced to fixed payments on the total net weight. This swept away the whole maze of accounts; at present mails in transit are weighed during four weeks every six years, as a basis for charges. The postal convention of 1874 was ratified by the action of the diplomatic representatives of the powers at Bern, in May, 1875.

A very important postal congress was held at Paris in 1878. The French representatives favored the conclusion of an entirely new convention, but the action taken did not go beyond a modification in some details of the convention of 1874. The union at this time assumed the name of Universal Postal Union. The number of states and colonies represented had risen to thirty-two. While the organization of the union was not materially modified, the voting right of colonies was regulated so as to give one vote each to British India

and Canada, and one vote each to the combined French, Spanish, Dutch, Portuguese, and Danish colonies. Subsequent congresses (Lisbon, 1885; Vienna, 1891; Washington, 1897; Rome, 1906) concerned themselves very largely with the details of administration. The congress of Vienna, however, instructed the international bureau of the postal union to act as a clearing house for the adjustment of the mutual financial claims of the various national postal administrations. Each administration forwards to the bureau a monthly statement of its accounts with every other national administration. The bureau balances these accounts, collects from the administrations whose balance is unfavorable, and pays over the proceeds to the nations entitled to a credit. This congress also provided for an international exchange of newspaper subscriptions. In many European states subscriptions to periodicals and newspapers may be arranged for through the postal service. The extension of this system so as to enable a subscriber to give his order and pay his subscription for some paper published in a foreign country, at the post office of his home town, was made possible by the arrangements adopted at Vienna. At this congress the Australian colonies were admitted to the union with the right of one vote. The congress of Rome, in 1906, agreed upon a further reduction in the charges by permitting a greater weight to be carried in letters. By divers groupings of member-states, numerous restricted unions for special purposes have been formed.

The convention of the universal postal union, as revised by the congress of Rome in 1906, lays down certain principles of law regarding the relations and duties of the various postal administrations, and establishes the organization of the union as well as the functions of congresses, conferences, and of the bureau. The right of transit is guaranteed throughout the entire territory of the union. Transit charges, to be paid to each of the countries traversed, are based upon weight and distance. Thus, for instance, one franc fifty centimes is paid per kilogram of letters for distances not exceeding three thousand kilometers. The rates of postage on the different classes of mail matter are fixed on a uniform standard throughout the entire extent of the union; the rates for registry, too, are made uniform, although non-European countries are allowed to charge a double fee. The congress of Rome established the principle that postal administrations are responsible for the loss of a registered article, to the amount of

fifty francs. It also provided for prepaid reply coupons, which are issued in all the countries of the union and may be sent to any other country, there to be exchanged for a stamp to frank the reply. The convention contains special prohibitions with respect to things not to be sent through the international mails, though it "does not impliedly alter the legislation of any country as regards anything not expressly provided for by its stipulations"; nor does it restrict the right of the contracting parties to conclude treaties with a view to making special postal arrangements with each other.

The duties of the various organs of the union are outlined in the convention. The administrative organ of the union is the international postal bureau, located at Bern. It is under the supervision of the Swiss government. Its duties are to gather, publish, and distribute information of all kinds on the international postal service; upon the demand of the parties interested, to give advice on controversial questions; to give regular form to propositions for the modification of the *règlement*; to notify the various administrations of adopted changes; to facilitate the operations of international accounting; and, in general, to make such studies and engage in such work as shall be in the interests of the postal union. The official language is French, and the bureau publishes a monthly journal, *L'Union postale*, in French, English, and German. A very important article of the convention provides for the settlement of disputes by arbitration. In any case of disagreement upon the interpretation of the convention or concerning the responsibility of any administration, each of the governments concerned chooses another member of the union not directly interested in the matter; if necessary, the arbitrators thus selected choose another administration as umpire. Decisions are determined by a majority of votes.

A congress of the union shall be held not later than five years after the acts adopted at the previous congress have entered into force, or it may be called when demanded by two thirds of the governments. The congress is composed of plenipotentiaries empowered to introduce changes both in the convention and the *règlement*; whereas the conference is an administrative body which deals only with the latter. In the interval between meetings of the congress proposals for changes in the convention may be made and acted upon; in such cases six months must be given for the administrations to examine

the proposals before communicating their vote. For a change in the more important articles unanimity of votes is required, but articles regulating minor details may be modified by a two-thirds vote. If the question concerns only the interpretation of the convention, a simple majority is sufficient. Countries outside of the union may be admitted to membership upon their demand. The protectorates and colonies belonging to European countries and to the United States are arranged in seventeen groups, each one of which is considered as a single country or administration.

Further important organic arrangements are contained in the *règlement*, though the larger part of this is taken up with specific rules concerning the transmission of mail matter and accountability with respect to transit charges. The *règlement* divides the countries of the union into seven classes in order to determine the portion of budget charges to be borne by each. Each class contributes in the proportion of a certain number of units. The annual budget of the bureau at the present time is 125,000 francs. The duties of the bureau are more specifically laid down, and arrangements are made for communications to be addressed to it by the governments; its function of settling and liquidating accounts between the administrations is developed with special minuteness. It is the duty of the international bureau to effect the balance and liquidation of accounts of every description relative to the international postal service between administrations of countries of the union who desire to make use of this service. In 1907 the financial transactions of the bureau acting as a clearing house amounted to 76,916,000 francs.

The *règlement* may be changed in the same manner by the congresses, and in intervals between them by the governments, as in the case of the convention.

It may be noted that the tendency of development in the postal union has not been toward giving greater powers to majorities of member states. In 1878, out of twenty-three articles of the convention only six required unanimity of votes for their modification; at present as many as fifteen require unanimity, while only fourteen may be modified through a smaller vote.

The postal union now comprises all the countries and colonies of the world with the exception of Morocco, Afghanistan, Baluchistan, and a few Pacific islands. China and Ethiopia are the most recent

accessions to the union. A conception of the vast extent of the postal business of the world may be gained from the following figures : In 1905 there were mailed in the territory of the union 32,140 million pieces of mail matter ; the money-order business amounted to 6432 millions of dollars ; the declared value of objects sent amounted to 15,200 million dollars.

In 1909 a beautiful monument was erected at Bern to commemorate the founding of the postal union. Upon the occasion of its unveiling, a great many tributes were paid to the remarkable development and influence of the union. Expressions such as the following from the speech of M. Deucher, president of the Swiss confederation, are significant :

The old assembly house of the Bernese diet bears this inscription : " It is in this building that the universal postal union was founded on October the ninth, 1874." To-day, thirty-five years later, there rises on one of the most beautiful sites of our capital, the grand commemorative monument, the unveiling of which we are met to celebrate.

The five genii which surround the globe represent the universal importance of the union and attest the power gained by a great idea, for the realization of which nations went hand in hand, regardless of the difference of race, language, and religion, political and economic interests, — a triumph of civilization and culture, a bond of union between the peoples of the world. The universal postal union, a work supremely pacific, constitutes a real confederation of the nations, the representatives of which to-day turn their eyes to the international monument and express their gratitude to the master who created it.

A number of restricted unions have been formed for special purposes. The objects for which they were founded are in no way inconsistent with the purposes and activities of the general union, and all of them make use of the international bureau as their agent. There are also a great many treaties between individual countries concerning such matters as special postage rates. The following restricted unions are now in existence : first, the union for the exchange of money orders, founded in 1878 and comprising at present thirty-three states ; second, the union for the transmission of packages of declared value registered and insured, founded at the same time and comprising thirty members ; third, a parcels-post union, founded in 1880, with a present membership of thirty-nine states ; fourth, a union for the collection of payments through the postal service, founded in 1885, with twenty-one members ; fifth, a union for the use of books of identity, with twenty members ; and sixth, the union for facilitating subscription

to periodicals through the postal administration, with twenty-four members. The unions admit new members upon application. Their membership is constantly increasing, and most of them will ultimately coalesce with the general union as their object becomes more universally important. Meetings of these restricted unions are usually held together with the congresses of the universal postal union. The United States is not a member of any of these restricted unions, though it has made special arrangements with some countries, such as Canada, Mexico, Great Britain, and Germany, respecting lower rates of postage and other postal matters.

*The International Union of Railway Freight Transportation.*¹ From the earliest days of railway development in Europe the necessity for international arrangements with respect to the transit of merchandise from one country to another was apparent. As early as 1847 there was founded the union of German railway administrations, which is still in existence, comprising one hundred eight administrations in Germany, Austria, Hungary, Holland, Belgium, Roumania, and Russia. The affairs of the union are administered through the royal railway "direction" at Berlin, and every two years there is a general meeting for the revision of the regulations. The work of the conference is prepared by eight standing committees on various branches of the service, such as freight traffic, passenger traffic, and exchange of cars.

The idea of a more general union for railway transportation was first suggested by two experts, de Seigneux and Christ, of Switzerland, who petitioned the Swiss federal council to call an international conference. Preliminary plans for such a union were worked out in Switzerland and in Germany, and in 1878 the first conference met at Bern. It was composed of expert delegates of the following countries: Germany, Austria, Hungary, Belgium, France, Italy, Luxemburg,

¹ Procès-verbaux des délibérations de la conférence réunie à Berne au sujet d'une convention internationale en matière de transports par chemins de fer, Bern, 1878, 1881, 1886. Congrès international des chemins de fer, comptes rendus, at the dates and places of various conferences. Das internationale Übereinkommen über den Eisenbahn- und Frachtverkehr, Bern, 1901. *Zeitschrift für den internationalen Eisenbahntransport*, Bern, since 1893. Rosenthal, Ed., *Internationales Eisenbahnfrachtrecht*, Jena, 1894. Olivier, E., *Des chemins de fer en droit internat.*, Paris, 1885. Eger, G., *Das internationale Übereinkommen*, etc., Breslau, 1893. Meili, *Das Recht der Verkehrs- und Transportanstalten*, 1888. Gerstner, Th., *Der neueste Stand des Berner Übereinkommens*, Berlin, 1901. *Bulletin du Congrès internat. des chemins de fer*, Brussels.

the Netherlands, Russia, and Switzerland. The two prime movers for the conference acted as its secretaries. In a session occupying a month, the conference, on the basis of the preliminary studies, worked out the text of a convention concerning railway freight traffic, a convention creating an international commission, and supplementary ordinances. The results of these labors were referred to the various governments which had been represented at the conference. They were carefully studied by the administrations concerned, and memorials suggesting improvements and modifications were handed in by the latter. A second conference was convened in 1881. It also met at Bern, and the same powers were represented. This conference introduced a number of important modifications in the convention. It suggested the creation of a central bureau in place of the commission provided for by the first conference. So careful were the administrations and governments interested that even yet they were not ready to accept the results of all these labors. After additional consideration a third conference met at Bern in 1886, which molded the convention and the regulations into their final form. It also adopted a protocol for the holding of a final conference of diplomatic representatives at which the convention might receive formal sanction. This meeting ultimately took place in 1890. It accepted the convention as adopted by the third conference, with some minor changes. Ratifications were exchanged on September 30, 1892, and the union as well as its central bureau began operations on January 1, 1893.

The main portion of the convention thus carefully worked out by the best expert talent of continental Europe is composed of a statement of general principles as well as of more detailed rules concerning the transportation of railway freight from one country to another. The fundamental principle established by the convention is that transportation is obligatory, and that therefore no article of ordinary merchandise can be refused acceptance. Among the chief matters included are the continuity of transportation under a single bill of lading, the form of which is determined by the convention; uniform regulations with respect to packing and to the transport of dangerous substances and breakable articles; the responsibility of railway administrations, in international freight transportation, for delays, losses, and damages to goods. The competent tribunal for the trial of railway cases is that of the domicile of the company or administration

affected. Judgments are however made executory in any of the contracting countries, without a revision of the substance of the litigation. The arbitration of controversies between different administrations is also provided for. The inclusion of passenger traffic in the convention, though suggested, was not seriously considered at the time because of the feeling that to introduce so difficult a matter might greatly embarrass the achievement of a plan for united action.

The organization of the union as determined by the convention is as follows: The administrative organ is the central bureau, which is located at Bern. Its functions are, first, to receive communications from the contracting states and from the railway administrations interested, and to transmit them to other states and administrations; second, to gather, arrange, and publish information of all kinds which may be important to the international freight service; third, at the demand of parties, to pronounce arbitral sentences on controversies which may arise between different railways; fourth, to give due form to suggestions for the modification of the present convention, and to propose to the treaty states the calling of a new conference; fifth, to facilitate between the different administrations financial operations necessitated by the international freight service, such as the collection of arrears, and the maintenance of stable credit relations among the various railways. The bureau, therefore, acts as agent for the liquidation of accounts due from one railway administration to another, and the method of demand and collection, as well as the responsibility of the respective states for such dues, are regulated in detail by the *règlement*. The central office also edits an authoritative list of railway lines with international connections. In the special *règlement* for the central bureau the federal council of Switzerland is given authority to organize and supervise that institution. The expenses of the bureau are not to exceed one hundred thousand francs per year; they are borne by the contracting states in proportion to the length of their railway lines, which form part of the international service. The central office is authorized to issue a publication in French and German (*Zeitschrift für den internationalen Eisenbahntransport; Bulletin des transports internationaux par chemins de fer*).

In agreement with the terms of the convention, the Swiss federal council has established a central bureau composed of a director, a vice director, a juristic and a technical secretary, and the necessary

clerical personnel. The international office, like the similar bureaus of the postal and the telegraph union, is placed under the direct supervision of the Swiss Department of Post Offices and Railways, and the general regulations made for these bureaus are also made applicable in this case. The most striking function of the central office is that of pronouncing judgment in controversies between different railway administrations. According to the ordinance of the federal council, the court in such cases is composed of the director of the bureau and two arbitrators. The latter, as well as two substitutes, are appointed by the federal council. At the desire of the parties, or in cases of small importance, the director himself may act as judge without the assistance of other referees. The control of the steps of the arbitral procedure is in his hands and he also presides in the court. In case of disagreement between him and the arbitrators, he may call in the two substitutes, and should there be an equality of votes, his opinion is decisive. The services of this tribunal are gratuitous as far as the parties to the controversy are concerned. The judicial function of the central office has been appealed to in numerous cases. Prominent experts have acted as arbitrators, perplexing controversies have been settled, and the arrangement has given general satisfaction.

The first conference for the revision of the convention took place in Paris in 1896. The modifications which it introduced were of a technical nature. After prolonged negotiations they finally went into effect in October, 1901. On account of these delays a long period elapsed between the first and second revision conferences, the latter of which did not meet until 1905. The feeling at this time was that, the convention having proved very acceptable in detail and successful in its operations, and its provisions having entered into the administrative practices of all the countries concerned, changes should be made only with great care. Future conferences should not consider matters which have not been carefully examined by the contracting parties before the conference, with a view to ascertaining the bearing of new propositions upon their respective systems and instructing their delegates accordingly. The conference concluded that it would be sufficient to have a general meeting once in five years instead of every three years as provided in the original treaty. Though important modifications were introduced in the technical details of the

convention, they did not affect the organization of the union. The annual budget of the central office was increased to one hundred ten thousand francs, and arrangements were made for instituting a pensioning system for its officials and employees.

At this conference an effort was made to have the arbitral function of the central office extended to controversies between the railways and the general public. This change was, however, not sanctioned, though the conference declared that officials of the central bureau might personally act as arbitrators. But such judgments are not to be published in the official bulletin. Several other proposals failed of adoption. The Swiss federal council favored the extension of the union to the transportation of passengers and baggage. The Russian government desired to have the bureau instructed to work out and publish a complete statistical report on international railways, their traffic and operation. The latter proposition was not accepted because the extent and cost of the undertaking were not perfectly clear to the conference, while the former appeared to necessitate previous negotiations among the governments concerned. The idea of making an international agreement concerning passenger traffic was however taken up again by the Swiss federal council, which, on February 9, 1909, resolved to submit to the states who are members of the international union a draft treaty concerning this subject. This convention is at the present time being considered by the member states. It includes international arrangements concerning the carriage of passengers from country to country, as well as the transport of baggage and of express parcels. Its adoption, which is considered a question of only a short time, will bring the entire railway traffic of the principal states of continental Europe within the realm of international agreement and regulation. The codification of the international railway law concerning freight has been in every way successful, facilitating commerce and simplifying the work of the various administrations concerned.

While the union under discussion comprises only states of continental Europe, there is an organization of a semipublic nature, the International Association of Railway Congresses, which includes a much larger number of nations. It was founded in 1885, for the purpose of establishing an interchange of experience in railway management, and its membership now consists of forty-eight governments and four

hundred thirteen railway administrations. The seventh congress was held at Washington in 1905 ; the eighth, at Bern in 1910.

A convention was adopted by an international conference at Bern in 1882, for the purpose of securing uniformity in the technic of railway administration. Two subsequent conferences, in 1886 and in 1907, continued this work. Eleven continental European states have taken part in these conferences and ratified one or more of the conventions. The latter deal specifically with such subjects as the gauge of railways, the character of through carriages, and the construction and maintenance of rolling stock.

Automobile conference. In October, 1909, there was held a conference, at which delegates from eighteen countries were present, for the purpose of working out a convention embodying international regulations for motor cars. The principal countries of Europe, as well as the United States, were represented by official delegates. The convention adopted lays down the conditions to be fulfilled by automobiles and by their drivers before international road certificates may be granted to them. It controls the issuance and validity of these certificates, and requires that each motor car shall carry, for purposes of identification, its number, as well as a large-sized letter establishing its nationality. Moreover, rules with respect to the position of signposts on the public roads are laid down, and it is provided that in the meeting and passing of vehicles, the customs of the locality in which the driver finds himself must be strictly respected. This convention may be looked upon as an administrative arrangement. The delegates of some of the countries did not represent the department of foreign affairs but another administrative department of their government. While such delegates do not have a formal right to bind their country by signing the treaty, their participation will ordinarily assure the enforcement of the convention by the administrations which they represented. Arrangements of this kind have been entered into at other times, as, for instance, in the case of the South American agreement respecting dactyloscopy, which is discussed below. The convention was signed by the delegates of sixteen governments, and by April, 1910, it had been formally ratified by the following : France, Germany, Austria-Hungary, Belgium, Spain, Great Britain, Italy, and Monaco ; so that it came into force May 1, 1910.

*Navigation.*¹ The methods and rules of navigation on the high seas are a matter in which naturally all seafaring nations are interested. It is, therefore, not surprising that signals and routes have been regulated to a certain extent by international coöperation. A signal code was first adopted by England and France in 1864. Other nations from time to time joined in accepting this code, which was given a thorough revision in 1899. At the present time forty states have adopted it. Through the use of flags of various sizes, forms, and colors, ships are enabled to communicate with each other, and thus a veritable international sign language has been created.

England and France also led the way in the adoption of conventional rules with respect to routes of navigation, as well as night and fog signals. These rules also have been remodeled from time to time, especially at the conference of Washington in 1889. They are at present accepted by thirty states, and though their observance has not been made obligatory on ships, they are as a matter of fact generally observed by navigators.

The work of harmonizing and eventually of codifying international maritime law has been discussed at the annual conferences of the International Maritime Committee, which have taken place regularly since 1896. The committee is the central organ of national associations in twelve leading states; it has its seat in Antwerp and publishes a bulletin. Another body dealing with maritime interests is the International Association of the Marine, which was founded on French initiative. At its meeting at Lisbon in 1904, on which occasion the delegates of eight governments participated, the association voted for the establishment of an international maritime bureau. These private and semipublic endeavors have been supplemented by the work of an international conference on maritime law, convened at Brussels in 1905 on the invitation of the Belgian government. At this conference thirteen powers were represented and a convention project was adopted, covering the law of salvage and collision. This convention was further discussed and elaborated at a second conference held at Brussels in 1909.

¹ Protocol and Proceedings, International Marine Conference, 1889, Washington, 1890. *Bulletin du Comité maritime international*, Antwerp. *Revue internat. de droit marit.*, Vol. XIX, pp. 800, 937. *Ann. de droit commerc.*, Vol. XVIII, p. 323. Govare, P., in *Revue de droit international privé*, Vol. I, p. 593. Fromageot, H., *Projet de création d'un bureau international de la marine*, Paris, 1902.

There also exists a great semipublic union of navigation interests, the Permanent International Association of Navigation Congresses, which was founded in 1900. It numbers at present among its associates 25 governments and 1390 private organizations. Its annual budget is 75,000 francs, of which the states contribute 60,000 francs.

II. ECONOMIC INTERESTS

*The Metric Union.*¹ One of the most serious inconveniences of international commerce arises from a difference in the standards of weights and measures. The adoption of a uniform standard was therefore urged at an early date by the representatives of commerce and by scientific associations. In 1867 the international geodetic conference at Berlin pronounced in favor of the universal use of the metric system. It also suggested the creation of an international commission which should supervise the keeping and duplication of standard units of measure, in order to avoid a gradual divergence among the various national standards. In 1869 the French government created a metric commission (*Commission du mètre*), composed of French and foreign members, for the purpose of advancing unity of measurements. A conference called by this commission discussed the scientific methods required for assuring the stability of standards, and suggested the creation of an international bureau. For the purpose of carrying out these suggestions a diplomatic conference was convoked in Paris in 1875, which adopted a treaty on the subject. Under this treaty there was created a bureau of weights and measures, installed at Sèvres, near Paris. It is the function of this bureau to preserve the original standards of measurement, and, upon request, to furnish accurate copies to governments and scientific institutions. The bureau is under the supervision of a committee representing the states who are members of the union. From time to time there is held a general conference composed of delegates of the treaty states. The conference confines itself to the discussion of scientific methods for perfecting the accurate reproduction of standards of measurement. The bureau has become an important scientific center for metrological investigations. It is supported by contributions from the treaty states, and by fees received for reproductions of the prototype measures.

¹ Bigourdan, G., *Le système métrique des poids et mesures*, Paris, 1901. Moynier, *op. cit.*, p. 57. Olivart, *op. cit.*, Vol. II, p. 477.

The French government has dealt in a very liberal spirit with this institution. Not only are the buildings occupied by the bureau free from taxation, but the foreign members of the commission who reside at Paris are allowed a like exemption. Moreover, the bureau at Sèvres has always had some foreigners on its staff.

*Patents, trade-marks, and copyrights.*¹ As a result of long-continued discussion on the part of persons and associations interested in the development of industrial inventions, the French government, in 1880, issued an invitation for a conference on the protection of industrial property, to be held at Paris. At a second conference held at the same place in 1883 there was adopted and signed by the representatives of eleven states a convention for the protection of patent rights and trade-marks. The purpose of the union thus formed was not the complete unification of the respective laws of the member states, but rather the creation of administrative rules by which the citizens of one state would be permitted, without expensive formalities, to come under the protection of the patent and trade-mark laws of the other contracting states. In the words of the convention, "The subjects or citizens of each of the contracting states, as well as subjects and citizens of states which are not parties to the union, who are domiciled or have industrial or commercial establishments within the territory of any state of the union, shall enjoy in all the other states of the union the advantages which their respective laws accord at present or shall accord in future to their own nationals. Consequently they will have the same protection as the latter and the same legal recourse against any infringement of their rights, upon having complied with the formalities and conditions imposed upon nationals by the internal legislation of each state."

¹ Bergne, J., *Internat. Copyrights Union*, L.Q.R., Vol. III, p. 14. Briggs, Wm., *Internat. Copyright*, London, 1906. Darras, A., *Du droit des auteurs et des artistes dans les rapports internationaux*, 1887. Delzons, in *Revue de deux mondes*, Vol. XLVIII, p. 895. Dubois, J., "De la révision en 1908 de la convention de Berne," *Journ. de droit international privé*, Vol. XXXVI, p. 661. Frey-Godet, "La protection internationale des marques industriels," in *Zeitschrift für Völkerrecht und Bundesstaatsrecht*, Vol. I, p. 329. Olivart, *op. cit.*, Vol. II, p. 402. Poincard, L., in *Annales des sciences politiques*, Vol. XXV, p. 67. Soldan, *L'Union intern. pour la protection des œuvres littéraires et artistiques*, 1887. *Annuaire de l'Association internationale pour la protection de la propriété industrielle*. Recueil des conventions et traités concernant la propriété littéraire et artistique; published by the international bureau, Bern, 1903. "Paris Copyrights Congress," in *Nation*, Vol. LXXI, p. 226. *U.S. House of Repr. Doc. 1208*, Sixtieth Congress. International Copyright Union, *Bulletin No. 13*, Copyright Office, Washington, 1908.

An administrative arrangement such as this might of course lead the way to a gradual assimilation of the various systems of national patent law themselves, although this would not be its immediate object. A central organ of the union, the international bureau of industrial property, was established at Bern. The functions of this office were at first confined entirely to correspondence, investigation, and publication. It was charged to bring together statistics and other useful information, to issue a periodical (*La propriété industrielle*), and to prepare preliminary studies for the conferences. The suggestion to make it an office for the registration of trade-marks and patents did not at first find favor. At the second revisionary conference, held at Madrid in 1891, the proposal for a trade-mark registry was repeated. Though this arrangement is not as yet acceptable to all the treaty states, it has been adopted by ten of them, who thus form a restricted union under the more general convention. Under this system the registration, at the international bureau, of a trade-mark already registered in one of the treaty states has the effect of giving protection in all the other contracting states without any further special registration in any of them. This method of procedure is a great simplification, and it materially reduces the expenses of industrial companies on account of trade-marks. The net income of this special service is distributed pro rata among the states of the restricted union. This arrangement, by which the international bureau becomes an administrative organ of the treaty states, is admirable for its directness. It does not involve any change in the national law, but simply entitles the person or firm registering a trade-mark to whatever protection is given in the respective treaty state to this form of commercial property. Another restricted union was established at the Madrid conference among eight states, for the purpose of preventing fraudulent indications of the place of origin of merchandise.

The general union was strengthened in 1903 by the accession of the German Empire, which, up to that time, had held aloof. It comprises at the present time seventeen countries, including the United States, in which country the conference of 1911 will be held.

The formation of the union for the protection of industrial property served as an encouragement to those men who desired to secure similar international privileges to works of art and literature. An international literary and artistic society had been formed in Paris in 1878

under the presidency of Victor Hugo. Its main purpose was to bring about a more complete protection of literary property. At a conference held at Bern, in 1883, the association worked out a general project of a convention for the international protection of copyrights. Thereupon the Swiss government was prevailed upon to call an official conference for the purpose of discussing and adopting a convention of this kind. Three diplomatic conferences were held in successive years, beginning in 1884, which resulted in the formation of the international union for the protection of literary and artistic property, and the adoption of the convention of 1886 on international copyright. The conditions existing before the creation of the union were in every way unsatisfactory. The systems of legislation of the different countries in matters of copyright were conflicting. Some of them granted no protection whatever to foreign authors ; any privileges that had been secured by the latter were based on treaties between individual countries, which differed greatly from one another. This condition was much improved by the adoption of the Bern convention of 1886, though indeed it constituted only a first step in the evolution of a satisfactory universal law of copyright. Such a law is not at present feasible on account of the jealousy of individual states in behalf of their own legislation. The national laws were however affected in two ways. In the first place, the convention provided that authors who are citizens of one of the contracting countries shall have their works protected in all the others. This was effected without a change in the laws, by giving an author such protection abroad as the existing legislation in each country may accord to its citizens or subjects. But in addition to this, certain general principles were laid down to which national legislation must conform. These latter rules constitute the beginning of a uniform system of copyright law, though they are of such a nature as still to leave a wide latitude for national discretion. The main principles, established in 1886, are as follows : Writings, music, works of fine art, and scientific designs are protected for a time which must not exceed the period of protection accorded either in the country of origin or in the country in which protection is sought. The right of translation is retained by the author for a period of ten years after the publication of the original. Dramatic works are protected against production in the same manner and for the same period as writings.

A conference for the purpose of revising the Act of Bern was held at Paris in 1896. It worked out and adopted an interpretative declaration and an additional act. The former settled a number of disputed points in connection with the first convention. The interpretations adopted were not satisfactory to Great Britain and were not ratified by that country. The additional act advanced the general work of international legislation and added to the principles established in 1886. This act was not adopted by Norway nor by Haiti. The principles established in the additional Act of Paris are as follows: Posthumous works are accorded protection. Authors who are not citizens of states in the union are personally protected when once their works have been published in, and receive the protection of, one of the member states. In other words, it is not the publisher, but the author, who is intended to have the benefit. Architectural works, as well as photographs, are accorded international rights.

In November, 1908, a second conference of revision was held at Berlin. It was a very important congress, attended by delegates of the fifteen members of the union, as well as of nineteen other nations who, though not members, had been invited by the German government. The latter included Argentina, the United States, and Russia. The conference adopted a complete code, intended to displace the former conventions. The most cardinal change made is that, while under the convention of 1886 foreign authors were protected according to the laws of their own country, it has now been established that the manner of protection abroad shall be governed by the laws of the country in which it is sought. This proposal was made by Germany on the ground that the problem of ascertaining the exact copyright law of other countries constitutes a great difficulty for the national judges. France supported the proposal, with the reservation that the time of protection should still be governed by the laws of the country of the author, because otherwise the countries giving the longest protection would be at a disadvantage. The German proposal was adopted by the conference. Hereafter, therefore, each country will protect literary works according to its own law. It was further enacted that the normal time of protection should be that of France, extending to fifty years after the author's death; but it is also provided that, if this duration is not uniformly adopted by all the countries of the union, the period of copyright shall not exceed the time fixed by the country of

origin. The system of 1908 approaches more closely the ideal of a universal protection, and it admits foreigners directly to the privileges accorded under the local jurisdiction. The law of international copyright was further developed in the following manner: Architectural drawings are to be universally protected, whereas heretofore protection was made dependent upon the existence of national legislation. International rights are also given to choreographic pieces and pantomimes, to photographs, and to reproductions of music on mechanical instruments. An attempt was made to extend the privileges of the union to works of decorative art, or art applied to industry, but all that could be obtained was protection as far as the internal legislation of each country permits. The delegates of France, Germany, and Italy favored universal rights in behalf of industrial art, viewing the latter as an expression of creative thought in the same sense as applies to the fine arts. The proposal was opposed by England and Switzerland. The law relating to journalistic writings also was more definitely settled. Works of fiction appearing in periodicals are completely protected. Scientific, literary, artistic, and political articles may be reproduced unless the author has expressly reserved his right. In all cases the duty to give credit to the source is imposed. News items are not accorded any protection. The law, as here stated, had in its main features been settled by the first convention. The convention of Berlin completed the work and assimilated political articles to those of a literary character. It will be apparent from the above that, while the convention of Berlin grants protection according to the law of the country where rights are sought, it also continues the work begun before, of making the legislative norms in the various treaty states more and more harmonious and uniform.

Though the convention constitutes a universal code, it is rather a model to which future development will conform, than an act whose integral acceptance on the part of all the members of the union is assured. The convention of Berlin declares, in Article 27: "The present convention shall replace, in the relations between the contracting states, the convention of Bern of September 9, 1886, including the additional article and the formal protocol of the same day, as well as the additional act and the interpretative declaration of May 4, 1896. The convention and acts above mentioned shall remain in force in the relations with the states which do not ratify the present

convention. The states signatory to the present convention may, at the time of the exchange of ratifications, declare that they intend, upon such and such a point, still to remain bound by the provisions of the conventions to which they have previously subscribed." The convention was signed by the delegates of fifteen states. According to its terms, as seen above, it may be adopted with reservations, or even the former conventions may still remain in force *in toto* between individual members of the union. Nevertheless the treaty has already been ratified by nearly all the members, so that it may, before long, entirely displace the earlier conventions. The United States is not a member of this union.¹ The creation of a new convention by the union always gives an impetus to the making of more advanced treaties between individual nations. Thus, among such countries as France, Germany, Italy, and Belgium, a number of treaties have been made which develop their copyright law in the direction favored by the international union.

The union, in 1888, created a bureau which acts as a central organ of information and publishes a journal (*Le droit d'auteur*). In 1892 this office was united with the bureau of industrial property. The associated bureaus are under the control of the Swiss Department of Foreign Affairs. Their expenses are borne by the treaty states upon a basis of unit ratios. The relations of these bureaus to the governments and national administrations are, of course, not so direct as in the case of the telegraph, the postal, and the railway-freight bureaus, nor do they possess any arbitral functions; but their work in bringing together authoritative information upon the patent and copyright laws of the various nations has been of great value to the governments and to persons specially interested. Movements for the reform of national legislation have derived their information from these international organs. The bureaus have a very small personnel, and have always stayed well within their modest budget, notwithstanding the volume and real importance of their published work.

*Union for the Publication of Customs Tariffs.*² In 1890 an

¹ The manner in which the attitude of the United States impresses the world is shown by such statements as the following: "The United States, in fact, subordinates the primordial right of authors to the narrow interest of American printers and their employers. It may be said without exaggeration that this is a situation unworthy of a great people." — LÉON POINSARD

² Acts of the conference of Brussels, 1888, and of Bern, 1894, in *Archives diplomatiques*, Paris.

international bureau was created for the authoritative collection and publication of customs tariffs. It is situated at Brussels, and is under the control of the Belgian administration. Its duty is to supply, with the least delay possible, copies of laws and administrative ordinances referring to customs tariffs, and to cause the same to be published in its own periodical (*The International Customs Bulletin*). Forty-one states are parties to this arrangement; they divide among themselves the expenses of the bureau, which has an annual budget of 125,000 francs. In 1894 it was attempted, upon the initiative of the Swiss government, to establish a similar office for the publication of treaties. Sixteen governments were represented at a conference held at Bern, where the project of the Swiss government was discussed. On account of the lack of direct authorization on the part of several delegates, the conference did not take any action, but referred the project to the consideration of the various governments.

*Protection of labor.*¹ The efforts which have been made for the purpose of securing agreements for the protection of labor are especially instructive. To an unusual degree private and state initiative have been combined and intermingled in the coöperation between public officials and private experts to bring about an international understanding. No field of action reveals so clearly the limitations of international arrangements and the difficulties in the way of their achievement, nor, on the other hand, shows so fully the possibilities inherent in them. The government of Switzerland deserves the credit of having made the first attempts to secure an international conference on labor legislation, after the matter had been repeatedly considered by a number of large international congresses, composed of delegates of labor associations and of other organized bodies. In 1889 the Swiss federal council addressed an invitation to fourteen European

¹ A full bibliography is given by F. Dochow in *Zeitschrift für internationales Privat- und öffentliches Recht*, Leipzig, 1906. Francke, E., *Der internat. Arbeiterschutz*, Dresden, 1903. Account of the Bern conference with procès-verbal, in *Archives diplomatiques*, 1905, Vol. III, p. 271. *Bulletin de l'Office international du travail*, since 1900. Crick, D., "La législation internationale du travail," *Revue de droit international*, 1905, p. 432. Armand-Hahn, J. P., in *Annales des sciences politiques*, Vol. XX, p. 156. Jay, R., *La protection légale des travailleurs*, Paris, 1904. Schriften der internationalen Vereinigung für gesetzlichen Arbeiterschutz, Jena, 1901-1906. Bauer, "International Labor Office," *Economic Journal*, 1903. Raynaud, B., *Droit international ouvrier*, Paris, 1906. Pic, in *Revue générale de droit international*, 1907, p. 495. Mahaim, E., in *Rev. écon. internat.*, 1906. Metin, A., *Les traités ouvriers*, Paris, 1908.

powers, requesting them to send delegates to a conference for the purpose of discussing certain definite topics concerning labor legislation. The suggestion was favorably received by the majority of the countries addressed, and the federal council consequently decided to send out formal invitations. But at this very time the German emperor issued two rescripts, in which he pronounced in favor of international action in labor matters. Correspondence followed between Germany and Switzerland, and the smaller country yielded to the German Empire the honor of calling the conference, which then assembled in Berlin in March, 1890, with a representation of fifteen states. Three committees were appointed to consider (1) work in mines, (2) Sunday rest, (3) work of children, young workmen, and women. Though Switzerland proposed the conclusion of a binding convention and the creation of a central bureau, the conference did not favor the taking of such definite measures at that time. The only result of its work was the passage of resolutions embodying the opinion of the delegates on certain principles to be followed in labor legislation.

The conference thus having failed to produce tangible results in the form of a treaty, the propaganda for international labor protection was taken up with redoubled energy by private individuals and associations. In 1897 two labor-legislation congresses were held. The congress at Zurich was composed of the representatives of labor organizations. Although many opposing views were here represented, the delegates found it possible to unite upon a definite program of labor legislation. The congress which met in Brussels in the same year (international congress of labor legislation) was composed largely of publicists and economists. It confined itself entirely to discussion, not even passing resolutions. After the session, however, there was appointed informally a committee of three members for the purpose of finding means to carry on the work begun in the congress. The committee made certain arrangements with the Belgian government for the publication of an *Annuaire de la législation du travail*, but the political conditions in Belgium were not favorable to a further pursuance of the purposes of this group of men. Other national committees were however created, and the French committee eventually arranged for a conference, which was held at Paris during the exposition of 1900. This congress occupied itself with

the question of a permanent organization. It was decided to form an international association, open to all who believed in protective labor legislation. The association was to be composed of national sections, each with its separate organization and autonomy. The governing board was to be a commission composed of two delegates from each section, together with the representatives of governments which desired to take part in the enterprise. An international labor office was established, whose mission it is to publish, in French, German, and English, periodic reports on labor legislation in all countries; to furnish information on labor laws to members of the association; to assist in the study of the legislative protection of labor, as well as in the creation of a systematic body of international labor statistics. The labor office is located at Basel, where it began work in May, 1901, and where the first general assembly of the association was held in September of the same year. It was composed of delegates representing the national sections as well as four governments. This assembly expressed the opinion that, while the association itself might carry on an active propaganda for labor legislation, the bureau should confine itself to an objective and impartial study of labor legislation for the purpose of furnishing an absolutely reliable basis of facts and statistics. As the first questions for discussion and eventual action the assembly selected, first, industrial night work of women; and, second, the regulation of unhealthy industries, especially those using white lead and white phosphorus.

The second general assembly was held at Cologne in 1902. On this occasion seven national sections and eight governments were represented. The assembly considered the organization and the finances of the central office as well as the two questions submitted by the previous conference. The international commission was instructed to take steps to induce the various governments to consider the suppression of these industrial dangers. The commission, at its subsequent meeting at Basel, decided to appeal to the Swiss federal council in order that an international conference might be called to frame a treaty on these matters. Early in 1905 invitations were sent out, and in May the official conference met at Bern. Over fifty delegates were present, representing all the governments of Europe, with the exception of Russia, Greece, Roumania, and Servia. The conference took up the discussion of the two questions which had

been formulated and prepared by the assemblies of the international association. Although the sessions occupied only eight days, the discussions were earnest and many different points of view were brought out. The absence of Japan interposed special obstacles to the adoption of a convention on the use of white phosphorus, a material extensively employed in the Japanese match industry. The convention which was finally adopted on this point provided that after January 1, 1911, the manufacture and sale of matches containing white phosphorus was to be forbidden. The Japanese government was to be invited to join in this treaty before December 31, 1907. Eleven out of the fifteen states voted in favor of this agreement. The conference also adopted a protocol regulating the hours of night work for women. These projects were transformed into definite conventions by a diplomatic conference which met in December, 1906.

A study of the widening extent of the white-phosphorus prohibition is particularly instructive in that it shows the reluctance of governments to place restrictions upon industry, and the possibilities which are afforded of accomplishing this through the plan of international coöperation in the enactment of labor laws. The agitation started in countries where the match industry was of a comparatively insignificant character, and where the evils due to the use of white phosphorus outweighed more strongly the advantages attendant upon encouraging the business. Such countries made no opposition to the restriction, and as early as 1874 Finland and Denmark had prohibitive legislation and had been quite successful in stamping out the disease of necrosis. Switzerland fell in line in 1879, the Netherlands in 1901, and Germany in 1903. By this latter period substitutes had been found, so that the use of white phosphorus was not so imperative; therefore the action of Denmark, Switzerland, and the Netherlands in prohibiting the importation of matches of this material, and the fact that Japan had become so successful a rival that other markets were practically excluded, made Germany not unwilling to prohibit the use of the poison and join the ranks of those who were agitating for this humanitarian legislation.

Now began a more active campaign that the restrictions which these countries had imposed on this industry might become worldwide, and thus might constitute no special hardship upon home

industries. In France and Roumania the manufacture of matches was a state monopoly, so that it required but the actual substitution of potash for white phosphorus to accomplish the purpose, — a step taken in 1898. A special prohibitory law was there unnecessary.

The agitation for the extension of the prohibition resulted in its being placed on the program for discussion at the Bern conference of 1905; the convention adopted was promptly signed by Germany, Denmark, France, Italy, Luxemburg, the Netherlands, and Switzerland, and somewhat later by Spain, Belgium, Portugal, and Norway. Of the fourteen states represented in the conference, seven thus were ready to sign the treaty at once, but among these the prohibition was already in force in five states, while in the sixth the industry was almost negligible. Italy was the only country making any considerable concession, and here the convention has not as yet been ratified. By January, 1910, the convention had been ratified by France and most of her colonies, Germany, Denmark, Luxemburg, the Netherlands, Switzerland, Spain, Great Britain, and the Orange River Colony. Great Britain and Austria had previously conditioned their acceptance upon the adhesion of practically every country where the match industry was carried on, more especially of Japan. Great Britain pointed out that the signing of the treaty would necessitate (*a*) the postponement of other social legislation deemed more important in England, (*b*) depriving the people of their accustomed kind of matches and increasing the price, and (*c*) hampering the British export trade with restrictions not borne by competitors. The British contended that their system of restrictions had effectively stamped out necrosis, and that until other competing states were ready to take similar measures, they could not be expected to sign the convention. The effect of the treaty was, however, practically to exclude British matches from the European markets. This led to the passage of a parliamentary act in December, 1908, prohibiting the sale, manufacture, or importation of white-phosphorus matches. The exclusion of such matches from Australia, a field of export which the Japanese manufacturers were finding very profitable, will be a potent factor in inducing Japan to accede to the convention. So far, however, the burdens of the late war have rested so heavily upon that country that she has hesitated to hamper her industries by restrictions which are not imperatively demanded.

The extension of the white-phosphorus prohibition is of further interest as showing the obstacles which must be overcome before any prohibitory law can be made world-wide in its scope. Before nations can become signatory to treaties of this character they must have their social legislation developed to such a point that the proposed provision fits in readily with the established system. It is unreasonable to suppose that all countries that are thrown into industrial competition have constructed their social legislation along similar lines. The physical and intellectual development of the working classes depends upon many factors, among which climate and race are prominent; each country must bear in mind its own peculiar needs in framing industrial legislation, and the matter of conforming to the laws of other countries is of secondary consideration. There are many industries, too, where there is competition with countries in which the regulation of labor is primitive, and where for years to come no hope can be entertained of adequate laws properly enforced.

International labor legislation implies that the contracting states are developing their social laws along parallel lines. This is not necessarily true. Several countries may be equally advanced in general labor legislation, but economic pressure and national interests may have operated so that one has neglected or postponed some one branch of legislation in which the others have made considerable progress. An international treaty covering such a branch may mean the sacrifice of world markets on the part of one country, with no similar loss on the part of other nations. Though Great Britain was backward in prohibiting the use of white phosphorus, the fact remains that in regard to factory and labor legislation in general she was far in advance of most of the signatory powers to the convention of 1906. But the method of combining those countries which can pass labor legislation at comparatively little cost, and then gradually enlarging the field by cutting off the markets of recalcitrants, results in an extension of labor prohibitions which nations working independently might be years in accomplishing. The limitation noted further suggests a method of work for which the international association of labor legislation is admirably fitted, and which it is in fact pursuing with marked success. By operating through the national sections in accordance with the program outlined by the bureau, pressure can be brought to bear upon the respective governments to induce them to

legislate upon particular subjects ; when this has reached a stage sufficiently advanced, the time is ripe for an international agreement.

In regard to the regulation of industries through international conventions, the United States occupies a position less advantageous than do the European countries, owing to the peculiar form of our governmental organization. The enactment of social legislation belongs in the main to the states rather than to the federal government, and constitutional prohibitions keep the states from entering into treaties with foreign countries, or even among themselves, without the consent of Congress. The American section of the international association, especially in its operations through the state sections, is nevertheless accomplishing marked results in securing uniform laws in the various states, in conformity with the plans of the international association.

The extreme caution with which the governments have proceeded in regard to labor treaties is a characteristic mark of the jealousy which states feel in behalf of their legislative independence in such important matters. In the railway and telegraph service a unified administrative procedure for international traffic was forced upon the various governments by the circumstances of the case. That there is a great need for international regulation of labor laws is apparent from the interest which this subject has aroused. National advance in labor reform would in fact be checkmated were it not to be seconded by agreements of wider scope. Yet the governments have been very reluctant to commit themselves to any definite policy of uniformity in this matter, and the existing union has therefore remained semiprivate in its nature, for its main constituent elements are the national sections. The international labor office may also be called a semiprivate institution, though its work has been assisted in every way by the various public administrations which deal with labor affairs. The expenses of the office are borne partly by the contributions of national sections, but more largely by subscriptions of governments, Switzerland itself leading with a subscription of 12,000 francs a year, while the United States contributes only \$200.

In this connection we may also note the provisions of the Franco-Italian treaty of April 7, 1904. This treaty constitutes a very important attempt to have the privileges of national labor legislation extended to laborers who are sent in from another state. The

convention refers especially to the gratuitous transfer of the savings accounts of laborers from one country to another, the admission of foreign laborers to the benefits of national labor insurance, and the extension to them in general of the protection afforded workmen by the national law. Each power is obliged to make a full annual report on matters of public administration relating to labor, so that a guarantee may be afforded of the faithful carrying-out of the treaty provisions, through a mutual accountability.¹

On July 3, 1909, representatives of Great Britain and France signed a convention at Paris, providing for the admission by either country of laborers belonging to the other, to the benefits of state workmen's insurance against accidents.

*The sugar convention.*² For over forty years past, negotiations have from time to time been carried on among the powers for the purpose of putting restraints upon the policy of individual governments, by which they attempt to modify the commerce and production of sugar by means of a bounty system. Earlier treaties, such as those of 1864 and of 1877, proved inadequate to accomplish this purpose, because of the lack of compulsory provisions and the consequent failure of some of the contracting nations fully to live up to the agreement. After long-continued negotiations and a succession of conferences, a convention was finally concluded in Brussels in March, 1902, by which a number of European states formed a union for the purpose of doing away with sugar bounties and placing a fixed limit upon import duties (they are not to exceed the excise tax by more than six francs per quintal on refined, and five and a half francs on crude, sugar). The union included at the time of its formation nine states, and it now has fourteen members, including Russia, which came in under a special arrangement in 1907. A permanent organization is provided for in Article 7 of the treaty, which creates a standing commission charged with supervising the execution of the agreement. This commission is composed of delegates of the

¹ Text in *Revue de droit international*, 1904, p. 296. Guyot, T., *ibid.*, p. 359. Pic, in *Revue générale de droit international*, Vol. XI, p. 515.

² Text of the treaty of 1902 in *Staats-Archiv*, Vol. LXVII, p. 267. Martino, G., "The Brussels Sugar Conference," *Ec. Jour.*, 1904. Taylor, B., "Sugar and the Convention," *Fortnightly*, Vol. LXXVII, p. 636. Lough, T. H., "The Sugar Convention of Brussels," *Contemp. Rev.*, Vol. LXXXIII, p. 75. Kauffmann, *Weltzucker-industrie*, 1903. Politis, N., *L'Union internat. des sucres*, 1904.

contracting states, and has its seat at Brussels. Its functions are as follows: (*a*) to determine whether in the contracting states there is accorded any direct or indirect bounty on the production or exportation of sugar; (*b*) to determine whether the contracting states, which are not exporters, continue in that special condition; (*c*) to determine the existence of bounties in nonsignatory states and the amount of the compensatory duty; (*d*) to give advisory decisions on questions in controversy; (*e*) to give due form to requests for admission to the union on the part of states which are not yet members; (*f*) to authorize the levy of an exceptional surcharge (not more than one franc per hundred kilograms) by any one of the contracting states against another, by whose sugar its markets are invaded to the injury of national production.

In general, it will be seen, the duties of the commission are confined to determining the existence of facts. On questions submitted, it makes an official report addressed to the Belgian government, to be communicated to the contracting states. But certain determinations of the commission have a direct validity, and form the basis of contingent treaty obligations on the part of the contracting states. This is the case with reference to the matters mentioned under (*b*) and (*c*) above. As soon as the commission shall determine that the states of Spain, Italy, and Sweden have begun to export sugar, these states, under the agreement, must conform their legislation to the dispositions of the convention. Whenever the commission ascertains the existence of bounties in nonsignatory states, the treaty powers are bound to levy a countervailing duty upon sugar imported from such sources. These determinations are made by a majority of the commission, each state being entitled to one vote, and they go into effect within two months of their date. An appeal, to be considered, must be lodged within eight days after the notification. It will then be decided within a month.

The commission is assisted by a permanent bureau located at Brussels, upon which is imposed the function of collecting, arranging, and publishing every kind of information and statistics concerning sugar legislation throughout the world. The expenses of the bureau and of the commission are borne by the contracting states, who also pay individually the expenses of their delegates. It is to be noted that these organs of the union do not correspond directly with the

contracting states. The communications are all made through the Belgian government, which thus becomes the diplomatic agent of the union. Even information on laws and regulations concerning sugar, as well as statistical data, are not communicated directly to the commission, but through the Belgian government as an intermediary. All reports of the commission are likewise transmitted through the Belgian government, which also has the right of calling new conferences. The sugar commission is the only international organ which has a right, through its determinations and decisions, to cause a direct modification of the laws existing in the individual treaty states, within the dispositions of the convention. Though not given direct legislative power, it makes determinations of fact upon which changes in the laws of the individual states become obligatory under the treaty. Its function may be compared to that intrusted to the President of the United States in the reciprocity provisions of the McKinley and Dingley tariff laws.

In 1907 the life of the union was extended for a period of five years from September 1, 1908. It was also agreed that after this date Great Britain should be released from penalizing the importation of bounty-fed sugars, but such sugars when reexported from Great Britain to any other contracting state would become liable to the compensatory duty.

*Agriculture.*¹ Like other economic interests, those of agriculture extend in their relations beyond the political boundaries of states. The prosperity of the farmers of a nation is determined to a large extent by the conditions, legal and economic, in markets beyond the national boundary. Being more dispersed than the representatives of other pursuits, commercial or industrial, agricultural producers have been less successful in uniting for a defense of their common interests. Yet several private associations for the unification of various agricultural interests throughout the world were formed toward the end of the nineteenth century. A general international congress of

¹ Della Volta, R., "The International Institute of Agriculture," *Rev. d'éc. pol.*, Vol. XIX, p. 597. Gidel, "L'Inst. agricole internat.," *Annales des sciences politiques*, Vol. XX, p. 630. Pantaleoni, M., in the *Giornale degli economisti*, February, 1905. Papafava, F., *ibid.*, September, 1905. Henry, A., *L'organisation du commerce des blés*, Brussels, 1900. Luzzatti, L., "The International Institute of Agriculture," *North Am. Rev.*, Vol. CLXXXII, p. 651. Bellini, A., *L'Istituto internaz. d'agric.*, Turin, 1906.

agriculture has assembled periodically. It is composed of national sections and has for its organ a permanent international commission. Moreover, special organizations were founded to develop international relations among special groups of producers. Thus there was created a statistical union of sugar production and a congress of cotton producers and manufacturers. The latter established a permanent executive organization at its meeting in Zurich in 1904. The cotton congress, held the year after the international institute of agriculture had been created, expressed its sympathy with that undertaking, and the hope that it might soon include in its studies and operations matters relating to cotton culture. A German scientist, Dr. Ruhland, has organized at Freiburg an international office for the observation of grain prices and markets, which has done valuable work in providing accurate information on the supply and prices of grain, thereby enabling producers to take intelligent advantage of the conditions of the world's market.

These various tentative efforts and organizations, with many others not here mentioned, indicated that the time was ripe for the creation of a more general union for the advancement of agricultural interests. The official initiative in this matter was taken by King Victor Emmanuel III, of Italy, to whom the idea of an international institute of agriculture had been suggested by Mr. David Lubin, an American. The king, on January 24, 1905, addressed to the president of the Italian council of ministers a letter in which he outlined the objects and purposes of such an institution in the following language :

The agricultural classes, generally the most numerous in the country, have indeed a great influence upon the destiny of nations ; but being without any organization or bonds of connection among themselves, they cannot effectively coöperate for the improvement and proper distribution of the different crops according to the demands of consumers, nor for the protection of their interests in the markets which, with regard to the most important products, constantly tend to become more nearly world-wide.

An international institute could therefore be of great utility if, free from all political aims, it engaged itself in the study of the conditions of agriculture in the different countries of the world, giving information from time to time upon the quantity and quality of crops, the manner of facilitating production, the least expensive and most rapid means of reaching the market, and the most equitable method of fixing prices. Such an institute, working in conjunction with the different national bureaus already created, would also be able to furnish accurate data upon the conditions of rural labor in different places, so as to be a useful and reliable guide for emigrants ; it could make arrangements for the common

defense against diseases of plants and animals, which resist individual or partial efforts; finally, it would exercise a beneficent influence in the development of rural coöperation, insurance, and agrarian credit.

On the basis of this royal initiative the Italian foreign office instructed its diplomatic agents to attempt to secure the coöperation of the powers for the purpose of creating an international institute. These instructions call attention to the disadvantages from which farmers now suffer through the lack of united action, which makes them a prey to speculators and to commercial and railway syndicates. But the instructions especially emphasize the support which the movement for world peace would receive through a development of the common interests of the agricultural class. It is therefore suggested that there be formed an institute composed of the delegates of various governments and of national associations of agriculture. The purpose of such an institute would include the organization of agricultural exchanges and labor offices; the organization of rural coöperation in sales, purchases, credit, and insurance; the defense against syndicates of intermediaries; and the preparatory study of legislative and administrative problems. Through the work of the institute the governments would be enabled to act in unison, upon the most reliable information. In order that these matters might be discussed, the Italian government extended an invitation to the powers to send delegates to a conference to meet at Rome. In preparation for this conference the ministries of foreign affairs and agriculture in Italy worked out a definite program which embodied these suggestions.

In the conference which met on May 28, 1905, thirty-eight European, American, Asiatic, and African governments were represented by official delegates. Although some of the most powerful states maintained an attitude of reserve, the general idea of an international institute of agriculture was received with favor. Opinions were however divided on the form that it should take. The thought of the Italian government evidently had been that there should be two component elements, possibly organized in two separate houses, one comprising the delegates of the governments, the other the representatives of agricultural associations. Thus only, it was believed, could the agricultural interests throughout the world become truly unified. The conference, however, confined its action to the establishment of an

institution composed solely of the delegates of governments, — diplomats or agricultural experts. The international institute of agriculture, as organized by the conference, accordingly takes the following form : It is a public institution, consisting of a general assembly and a permanent commission, in both of which each treaty power is represented. The general assembly controls the work of the institute. It considers projects prepared by the permanent commission, fixes the budget, and makes suggestions to the contracting governments with respect to modifications of the organization. The quorum is fixed at two thirds of all the votes of the contracting states. The permanent commission carries out the directions of the assembly, and prepares projects for consideration by the latter. It is composed of one representative from each of the states, although one delegate may represent several governments.

The functions of the institute are as follows : (*a*) to collect, study, and publish statistical, technical, and economic information relative to agricultural and animal husbandry, agricultural markets, and prices ; (*b*) to communicate the above information to governments interested ; (*c*) to investigate the payment of rural labor ; (*d*) to give notice of new plant diseases which may appear in any part of the world, indicating the extent of territory affected, the course of the malady, and, if possible, efficacious remedies ; (*e*) to study questions relative to agricultural coöperation, insurance, and credit ; (*f*) to present, for the approbation of governments, measures for the protection of the common interests of agriculturalists and for the betterment of their condition, taking account of all means of information, such as resolutions of international and other agricultural congresses, agricultural societies, academies, and other scientific bodies.

The states belonging to the institute are divided into five groups, each state being free to choose for itself to which group it will belong. Members of the first group have five votes in the assembly and contribute sixteen units to the income of the institute ; in the second group they have four votes and contribute eight units ; and so on down to the fifth, where each member has one vote and contributes one unit. The unit is not to exceed 2500 francs a year. The king of Italy supported the foundation of the institute by making over to it the revenues of certain valuable crown domains.

The organization determined on by the diplomatic conference at

Rome was far from meeting the desires and aspirations of the men who were most interested in the movement for an international union of agriculture. Not only is the institute a purely governmental institution, but its functions are practically confined to the collection of information and the suggestion of projects for treaties and legislative measures. Yet it could hardly be expected that the governments would immediately consent to the establishment of an organ with direct administrative functions, such as, for instance, an international coöperative union of agricultural credit. On the basis of the organization as effected, it will be possible to centralize efforts in behalf of the agricultural interests and to secure a gradual amelioration of agricultural conditions. The institute, as its organic law indicates, will hold itself ready to coöperate with national and international organizations representing private initiative, such as the international congress of agriculture mentioned above. In Italy there was organized in 1905 a special office for the representation of agricultural societies and coöperative organizations, which is to mediate between the latter and the international institute.

Several matters connected with agriculture, which have heretofore been regulated by separate treaties, will now probably be drawn within the scope of the agricultural institute. In 1878 there was formed in Bern a union comprising eleven European states, for preventing the introduction and spread of phylloxera. In March, 1902, a convention was concluded at Paris for the protection of useful birds; this has been ratified by eleven states. The treaty governments engage themselves to propose to their respective legislatures measures for the protection of birds which destroy insects noxious to agriculture. In this connection we may also mention the union for the protection of large African game, concluded in London, May 19, 1900, among the powers which have colonies in central Africa.

*Insurance.*¹ Though there has not as yet been created in the interests of insurance an international administrative organization, yet a number of governments have regularly participated in the meetings of international associations dealing with insurance problems. Most prominent among these is the international congress of actuarial

¹ Emminghaus, in *Zeitschrift f. d. Versicherungs-Wissenschaft*, Vol. VII, p. 9. Reports, Memoirs, and Proceedings of the Fifth International Congress of Actuaries, Berlin, 1906.

science. Not only have the meetings of this congress usually been held under government patronage, and under the presidency of some important statesman (in 1903, Secretary Cortelyou, in New York), but many governments have been represented by official delegates, and the deliberations of the congress have dealt to a large extent with administrative and legal, as distinct from technical and mathematical, subjects. The congress of 1906 was held in Berlin in conjunction with the fourth international congress of insurance medicine. Sixteen governments were represented by official delegates, and five of the thirteen topics of discussion dealt entirely with administrative and legal questions. The congress has an official organ in the permanent committee for insurance congresses at Brussels. Aside from the governments, national actuarial societies and similar associations are represented in its organization.

The international congress of protection against fire, which is a more purely private organization, resolved, in London in 1903, to establish experiment stations, an international expert commission, and a central statistical bureau. International congresses of labor insurance have been held repeatedly (the eighth congress met at Rome in 1906) and have received financial assistance from various European states.

III. SANITATION AND PRISON REFORM

*The International Prison Congress.*¹ Congresses for the purpose of the discussion of penitentiary administration and reform have been held at irregular intervals from 1846 on. At the congress of 1872, under the leadership of the United States, steps were taken to secure a permanent organization. Since 1880 congresses have been held every five years, the place of the last meeting being Washington (1910). At the congress at Budapest in 1905 twenty-eight nations were represented. The scope of the work of the congress is not apparent from its designation in English. This is an imperfect translation of *pénitenciaire*, a term which includes the consideration of all that relates to the moral and physical amelioration of prisoners as

¹ *Bulletin de la Commission pénitenciaire internationale*, Brussels and Bern. Jaspard, H., in *Revue de droit international*, 1901, p. 448. National Prison Association, Proceedings 1905, p. 227. *Charities*, Vol. XV, p. 116. "Les congrès pénitenciaires internat.," *Revue pénitenciaire*, 1905, p. 653. Le Poittevin, A., in *Revue de droit international privé*, Vol. I, p. 90. Barrows, S. J., *The International Prison Congress, Sen. Doc. 462*, Sixtieth Congress, first session, 1908.

well as to the prevention of crime. The executive work of preparing for the congresses is performed by the international penitentiary commission composed of one delegate from each country. The commission meets regularly every two years, and is composed of four sections, for the consideration of prison administration, penal law, prevention of crime, and juvenile delinquencies. The secretariate of the commission is situated at Bern. Some time previous to the meeting of the congress, series of questions prepared by experts are sent out to the various countries represented. They are submitted to careful review by adepts, and reports upon them are returned to the secretariate. All these reports are then edited and published in French, to be distributed among all the delegates appointed to the congress, in time for them to give these matters careful study. In this manner the discussions avoid all preliminary misunderstandings as to definitions and points at issue, and the meetings of the congress are usually very fruitful in the formation of definite opinions on matters connected with practical prison administration. The congress and the commission have no power to bind the respective governments by treaty; their purpose is primarily the exchange of expert opinion and knowledge, for the development of the science of penitentiary administration.

*International sanitation.*¹ (International defensive action against invasion by epidemics was first urged by the French government, which in 1851 called a sanitary conference to meet in Paris; this was followed by a second meeting in 1859. The terrible epidemic of cholera of 1865 caused the holding of a third congress at Constantinople.) Other conferences have followed at short intervals. Although from the first these had a diplomatic character in that they were attended by the representatives of governments, they were primarily scientific in their aims, confining themselves to discussions and resolutions rather than to elaborating treaties. Ultimately,

¹ Text of the treaty of Venice, 1897, in *Staats-Archiv*, Vol. LXI, p. 261. "La conférence de Paris, 1903," in *Revue générale de droit international*, Vol. XI, p. 199. Huot, "Conférence int. sanitaire," in *Rev. int. de droit marit.*, Vol. XIX, pp. 805-870. Loutfi, Z., *La politique sanitaire internat.*, 1906. Monod, H., in *Rev. d'administration*, March, 1904. Rapmund, O., *Das öffentliche Gesundheitswesen*, Leipzig, 1901, p. 126. 8^e Congrès internat. de hygiène et de démographie, Budapest, 1895. Huot, in the *Rev. int. de droit marit.*, Vol. XIX, p. 803. Procès-verbaux, Paris Conference, 1903, Paris, 1904. Text of Convention of 1903, transl. by Thomson, London, 1904.

however, more formal action was taken, and at Venice in 1892 the first general treaty for protection against cholera was framed. Every conference since then has added to the diplomatic work, that of Venice in 1897 and that of Paris in 1903 being especially important.

At the latter conference it was voted to establish an international sanitary office to be situated at Paris. Such a bureau had first been suggested at the international congress of hygiene at Brussels in 1897. At the Paris sanitary conference the president of the French delegation introduced the subject by calling for the creation of a *union de santé incarnée dans une autorité internationale fortement constituée*. The functions bestowed upon the bureau according to this first proposal are, however, not executive, but only informational. The office is to collect information on the progress of infectious diseases, being assisted by the sanitary authorities of the treaty states. The results of the work of the bureau are to be communicated to the various governments and published. The establishment of the bureau was supported by all powers represented, but was accepted with certain reservations by Austria, Great Britain, and Germany. The sixth sanitary conference, which met at Rome in 1907, drew up a formal convention which contains detailed arrangements for the new institution. The international office of public hygiene is located at Paris, and is under the control of a commission composed of delegates from all the member states. Its main object is "to collect and bring to the knowledge of the participating states facts and documents of a general character concerning public health and especially regarding infectious diseases, notably cholera, the plague, and yellow fever, as well as the measures taken to check these diseases." The number of votes allowed each treaty state, in the government of the office, is determined by, and is inversely proportional to, the number of the class to which it belongs as regards its participation in the expenses. The budget is fixed at 150,000 francs per year. The convention went into effect in 1908, after having been ratified by nine powers, including the United States. Other governments have since given their adherence.

The execution of the treaties of the sanitary union, with respect to prophylactic measures to be taken in Turkey and Egypt, is supervised by two commissions, the sanitary councils of Constantinople and of Alexandria. The *conseil supérieur de santé* of Constantinople

was created by arrangement between the Sultan and the maritime powers having relations with Turkey, as early as 1838. It was natural that the functions of surveillance created by the treaty of Venice in 1892 and by later treaties should be intrusted to this organ. The council is composed of seventeen voting delegates, four being appointed by Turkey, the others by the foreign treaty powers. Decisions of the council are taken by majority vote, and are directly executory. The Turkish minister of foreign affairs acts as president of the council, and the representation of the foreign powers is arranged through their respective legations at Constantinople. The council supervises the quarantine service at Turkish ports on the Persian Gulf and on the Red Sea, as well as along the Persian and Russian boundaries. The expenses of the council are met by fees imposed for quarantine services, which are in turn regulated by a "mixed commission on the sanitary tariff," composed of representatives of the various powers. The Turkish government also contributes toward the expenses.

The *conseil sanitaire, maritime et quarantenaire d'Égypte* at Alexandria was created in 1881. It is composed of the representatives of fourteen treaty powers and two representatives of Egypt. The presidency is accorded to the representative of Great Britain. The council has regular monthly meetings, and controls the Egyptian quarantine stations on the Red Sea, the Suez Canal, and the mouth of the Nile. A similar sanitary council exists at Tangier. It was created in 1840, and has also been brought into relation with the general sanitary union. The conventions framed by the various sanitary conferences control the treatment of suspected ships and passengers from countries subject to epidemics, in all the ports of the treaty powers. The conclusion of general treaties on this matter was for a long time resisted by Great Britain, because of fears in behalf of her shipping interests. The continued danger of infection from oriental countries, however, finally forced the European nations to unite in self-defense. The sanitary conferences, while fitted out with diplomatic attributes, are still largely concerned with scientific questions. The provisions of their treaties must frequently be modified in accordance with the latest determinations of science with respect to the period of incubation and the most efficient means for preventing the transmission of disease.

The international congress of hygiene and demography has a purely scientific character. It is composed of the official representatives of most of the civilized countries, together with delegates of scientific bodies and of local councils of public health. The congress has a permanent commission with offices at Brussels. Another similar organization, in which also governments officially interest themselves, is the international congress of school hygiene. Two government conferences have been held for the scientific discussion of leprosy (Berlin, 1897; Bergen, 1909); and the first international congress on the sleeping sickness was held at London in 1907. Six countries participated in the latter through official delegations.¹

*Pan-American sanitary union.*² The second Pan-American conference, which met at Mexico in 1902, passed a resolution concerning international sanitary police. Among other things it recommended that the "American governments shall coöperate with each other toward securing and maintaining efficient and modern sanitary conditions in all their respective ports and territories, to the end that quarantine restrictions may be reduced to a minimum and finally abolished." The conference also provided for the calling of a sanitary congress at Washington and the establishment of an international sanitary bureau at the same place. The latter was to be composed of a permanent executive board of not less than five members, to be elected by the congress. These resolutions were carried out, the bureau was established in Washington, and four congresses have been held to date. The second of these, which met in October, 1905, worked out a treaty project concerning the prevention of such epidemics as cholera, the plague, and yellow fever. This treaty has been ratified by fourteen American powers, including the United States, Mexico, Peru, Venezuela, Brazil, and Colombia. The third Pan-American conference, held at Rio de Janeiro in 1906, passed a further resolution on sanitary police. After recommending the general acceptance of the convention of Washington, it urged the adoption of measures tending to assure the adequate sanitation of cities and especially of ports. It had been pointed out that in order to be thorough, international sanitary police must not confine its attention to quarantine and to a

¹ See Brit. Parl. papers, 1907, Cd. 3778, and 1909, Cd. 4916.

² Proceedings of the International Sanitary-Conferences, Washington, 1902-1910. "Report of the Fourth Conference," in *Bulletin of the American Republics*, April, 1910.

definition of quarantinable diseases, but must advance to the taking-up of the effective sanitation in centers from which disease may spread. The Pan-American conference further resolved on the establishment, in the city of Montevideo, of a center of sanitary information, which shall supply to the already existing international sanitary bureau at Washington the elements necessary for a successful carrying-out of its work. Coöperation between the bureau of Washington and that established at Paris by the international sanitary union was also provided for, with a view to obtaining mutual information. The fourth international sanitary conference was held at San José in Costa Rica in 1909. The advance made in sanitation throughout America as a result of the efforts of the union was reviewed at this time, and the great benefits obtained through this work were brought out in an impressive manner. The conference adopted further resolutions embodying the results of the best experience in dealing with the plague, cholera, and yellow fever, and recommending specific measures for uniformity in mutual protection.

*The International Opium Commission.*¹ In view of the fact that the opium evil in China and other countries cannot be effectively combated except through coöperation among different nations, it was proposed by the American government in September, 1906, that a conference be held by a commission composed of delegates of the different powers. The commission met at Shanghai in February, 1909, upon which occasion thirteen nations were represented. The program had been prepared and was communicated to the countries concerned in advance. Each government had been invited to submit a report to be laid before the commission at Shanghai. After receiving reports and discussing the questions before it, the commission adopted a set of resolutions calling for legislation within the countries represented, against the manufacture and distribution of opium for other than medicinal purposes. On September 1, 1909, the American Secretary of State proposed to the interested powers that a conference be called, to meet at The Hague, for the purpose of framing a convention concerning opium, which would include the recommendations made by the opium commission and other matters connected therewith.

¹ Proceedings of the International Opium Commission, Shanghai, 1909. Treaties and documents concerning opium in *Am. Jour. of Internat. Law*, Supplement, July, 1909. Hamilton Wright, "International Opium Commission," *Am. Jour. of Internat. Law*, July and October, 1909.

*The Geneva Convention.*¹ The care of the wounded during wars has become the subject of a special international agreement, the Geneva convention of 1864. This regulates the treatment of disabled soldiers and neutralizes the sanitary and hospital services during military operations. This convention made possible the work of the Red Cross societies, which have been established in practically all civilized countries. These associations are organized on a private basis, though their work is essentially of a public nature, for which reason they must necessarily be in close touch with the administration of military affairs. The societies form a universal union, which has its administrative offices at Geneva, where it periodically holds conventions. The international committee of the Red Cross at Geneva acts as a central organ of communication between the national branches. Repeated attempts have been made to amend the convention of 1864, and finally, in 1906, a new convention was adopted at Geneva. The latter defines with greater precision the persons and services protected by the convention, but avoids the term "neutral" and gives, in some respects, greater rights of control to belligerents. The emblem of the red cross is henceforth to be protected against unauthorized and commercial uses.

IV. POLICE POWERS

*Fisheries police.*² The fishing industry in the North Sea, being carried on by fishermen of various nationalities, has required international legislation and protection. A treaty was concluded in 1882 between the six powers most directly interested. Under this treaty any commissioned ship of a signatory power may, in certain enumerated cases, intervene and arrest any fishing vessel belonging to a subject of a treaty power. The delicts for which such an arrest may be made are enumerated in the treaty, and the delinquent vessel must be delivered up to the authorities of its own country. This arrangement is supplemented by the convention of November 16, 1887, concluded at The Hague among the same powers, with the exception of France. Under this convention the surveillance and control of floating *cabarets*,

¹ *Bulletin international des sociétés de la croix rouge*, Geneva. Moynier, *Notions essentielles sur la croix rouge*, Geneva, 1896. Meurer, in *Zeitschrift für Völkerrecht und Bundesstaatsrecht*, Vol. I, p. 521. *Annuaire de la vie internationale*, 1908-1909, p. 421. Fauchille et Politis, *Manuel de la croix rouge*, 1908.

² Treaty of May 6, 1882, and of November 16, 1887, in *Archives diplomatiques*. Père de Cardaillac de St. Paul, *Étude de droit international sur la pêche*, Toulouse, 1903.

or liquor shops, is provided for. The policing is carried on by the commissioned ships of the treaty powers, which have the same rights of arrest in this matter as they were given under the treaty of 1882.

*Protection of submarine cables.*¹ The international status of submarine telegraphs led to much discussion when these instruments of communication were first put into use. In 1869 the government of the United States suggested the holding of a conference for working out a treaty project on the neutralization and protection of cables. The Franco-Prussian War caused the postponement of such action, although there was continued diplomatic and scientific discussion of the international law aspects of marine telegraphy. In 1879 the Institute of International Law took up this matter and came to the conclusion that the first object to be achieved was to protect submarine cables against wanton or careless destruction by means of an international agreement for the arrest of delinquents on the high seas. In 1881, on the basis of a resolution of the international congress of electricians, the French government issued invitations for a diplomatic conference, which met in Paris during the following year. Thirty-three states, as well as the international telegraph bureau of Bern, were represented, either by diplomatic or expert delegates. The delegates of the United States, the power which had originally taken the initiative, declined to take an active part in the proceedings, pleading lack of instructions from their government. The result of the deliberations of this conference was the drafting of a convention which was later ratified by the diplomatic representatives of the powers at Paris (March 14, 1884). Under this treaty certain precautions for the protection of cables are made obligatory upon fishermen and navigators. The commissioned ships of any signatory power may arrest ships suspected of having willfully or negligently injured cables. The arrest is made for the purpose of ascertaining from the ship's papers all necessary data with respect to it. An authentic written minute (*procès-verbal*) is made out on the basis of the facts thus ascertained and of the injuries observed. This document has legal force before the national tribunals of the delinquent, to which jurisdiction for the trial of such cases is reserved.

¹ Landois, *Völkerrechtl. Schutz d. submarinen Telegraphenkabel*, Greifswald, 1894. Renault, L., on protection of cables, in *Revue de droit international*, Vol. XV, p. 17. Conf. internat. pour la protection des cables, 1882, 1886, Paris, Impr. Nat.

*African slave trade and liquor traffic.*¹ Agreements for the suppression of the slave trade were made between Great Britain and France in the years 1833 and 1841. In the latter treaty some additional states joined. The congress of Berlin in 1885 took up the question again and determined in principle upon the more complete international organization of the preventive system. The Brussels conference of 1890 finally regulated the matter through a convention or general act in which both slave trade and African slavery itself were made subject to strict international regulation. An office was established at Zanzibar (*bureau international maritime de la traite*) for the purpose of superintending the enforcement of the general act. The five powers which primarily assumed the preventive operations on sea are represented in this bureau. A second bureau was established at Brussels for the purpose of collecting information and publishing documents and statistics with respect to the slave trade. Eighteen states are members of this union. The Brussels general act of 1890 also regulates the sale of liquors in the central belt of Africa (between twenty degrees north and twenty-two degrees south). In regions where the natives have not yet become accustomed to the use of liquors the traffic is entirely forbidden. For other parts a high minimum excise duty is fixed by the treaty. The bureau at Brussels is to act as an intermediary between the treaty powers for the exchange of information concerning the liquor traffic in their respective African possessions. Conferences were held in 1899, in 1906, and in 1908, at which the rules of 1890 were revised and amended. The traffic in firearms in Africa has been regulated in a similar manner by international action.

*The repression of the white-slave trade.*² The nefarious traffic

¹ Brussels General Act, in *Archives diplomatiques*, Vol. XXXV, p. 206. Documents relatifs à la repression de la traite, Brussels, annually. Recueil du bureau de Bruxelles. Actes de la conf. de 1906, Brussels.

² Int. Conf. for the Repr. of White Slavery, 1902, in *Archives diplomatiques*, Vol. LXXVII, pp. 154-263. Appleton, P., *La traite des blanches*, Paris, 1903. Reports of the International Congress for the Repression of White Slave Trade (London, 1899; Frankfurt, 1903; Paris, 1906). Renault, L., "La traite des blanches," in *Revue générale de droit international*, Vol. IX, p. 497. Rehm, in *Zeitschrift für Völkerrecht und Bundesstaatsrecht*, Vol. I, p. 446. Mayr, G. v., on the Paris congress on white slavery, 1906, in *Beilage zur Allgemeinen Zeitung*, Munich, February 5-6, 1907. Deutsch, J., on the congress of 1906, in *Revue pénitentiaire*, Vol. XXXI, pp. 84-104. Bérenger, R., "La traite des blanches," in *Revue de deux mondes*, July, 1910. "Deuxième conférence internat., correspondance, etc.," *Archives diplomatiques*, Vol. CXV, pp. 45-200.

known as the white-slave trade has for a considerable time operated on an international basis. The persons engaged in it have received protection from the fact that their transactions were not confined to one single national territory, but that acts apparently innocent and legitimate were followed by a consummation in another state which rendered the entirety of the act criminal. Without international agreement as to the responsibility in such cases, it would often be impossible to punish guilty persons because the acts committed in any one particular state might not amount to a completed crime. It was, moreover, necessary that the police administrations of the different states should support the efforts of each other by promptly giving information and in other ways, so that the execution of criminal designs might be frustrated. The matter of coming to an understanding was first taken up by private international congresses. The principal one of these organizations is the international union for the repression of the white-slave trade, which was founded in London in 1899 and has its central office in that city. The successive congresses of this union have worked out definite principles and methods for the purpose of preventing the traffic in question. Through its initiative the French government was prevailed upon to call a conference of the powers, which met in Paris in July, 1902. Fifteen states were represented, including Brazil on the part of America. The conference elaborated projects for a convention and for an administrative arrangement. The former includes such modifications of the principles of criminal law as would be necessary to make the suppression of the traffic effective. Certain divergencies as to the age of majority, the transmission of rogatory commissions, and other matters delayed the ratification of this treaty; but the Paris conference of April 18, 1910, resolved these difficulties in a satisfactory manner, and the convention has now been ratified by a number of states.

The "arrangement" has in view the adoption of methods of suppression which can be instituted, without legislative action, by mere administrative ordinances in the various states. This was ratified by a diplomatic conference assembled in Paris in May, 1904, and it has been accepted by sixteen powers, including the United States.¹ It further

¹ The legislative and administrative autonomy of the individual states of the American Union places great difficulties in the way of effective coöperation on our part.

provides that each treaty government is to create or designate a special bureau to collect all specific information about attempts to engage women for immoral purposes in foreign countries. Such bureau is to have the right of immediate communication with the similar bureaus in other states. The governments are to institute a special service of surveillance in railway stations and ports for the purpose of discovering attempts to carry on this illegal traffic. In cases where mere suspicion exists, such suspicion shall nevertheless be communicated to the authorities at the point of destination of the suspected persons. The repatriation of victims of the traffic is also provided for. The French government is made the agent of the union for the purpose of carrying on the diplomatic negotiations for the admission of new members. The London bureau will act as a central organ for purposes of communication, while in the individual countries certain police authorities, as, for instance, the police presidency of Berlin, have been designated to act as national bureaus.

The Paris conference of April, 1910, extended the methods of international police coöperation to the suppression of immoral writings and objects. The publication or manufacture of, and the commerce in, such things is to be generally forbidden; infractions may be tried in any country where the delict or some of its elements has transpired. By a "project of arrangement" each state binds itself to designate some authority to give information to the agents of the other governments respecting such cases. Fifteen powers were represented at this conference.

*The South American police convention.*¹ The Latin-American scientific congress, which met at Rio de Janeiro in 1905, after a discussion of the best means of interchanging information for identifying criminals, passed resolutions calling for the holding of an American police congress for the purpose of making an agreement upon this point. As a result a police conference met at the city of Buenos Aires in 1905. It included delegates of the police administrations of the province, as well as the city of Buenos Aires, of the city of Rio de Janeiro, of Santiago, and of Montevideo. It was therefore purely an administrative conference, representing not the national governments in their entirety but only the police administration

¹ Conferencia internacional de policía, convenio celebrado, Buenos Aires, 1905. Almandos, L. R., *Dactiloscopia Argentina*, La Plata, 1909.

of the capital cities. The convention adopted was an arrangement for the coöperation between these administrations for their mutual assistance. Paraguay later also gave its adherence. The convention provides for the interchange of data for the purpose of identifying criminals and suspicious characters. For purposes of identification the Argentinian system of dactyloscopy, together with a system of morphological description, was adopted, to be used in common by all the administrations. The treaty further provides for the exchange of information concerning the movements of suspicious characters.

V. SCIENTIFIC PURPOSES

Modern governments are devoting a large and constantly growing part of their energies to scientific work. In nearly every branch of their administrative activities it is necessary to conduct scientific investigations in order to provide a reliable basis for governmental action. While this is true even of the police functions, it applies especially to that part of government which relates to developing industrial, commercial, and agricultural life. Here the government, through its scientific institutes, endeavors to guide and assist the material development of the country by the discovery and testing of new methods. But as governments enter more fully into scientific work, and as a greater force of officials is employed in this manner, it is also soon discovered that international coöperation is necessary in order to make such branches of the service most effective. Moreover, there are certain determinations of scientific and technical facts that can be made in a satisfactory manner only through world-wide coöperation. In all sciences it is important that there should be a free and universal interchange of experience and results; but some scientific undertakings involve the contemporary study of related groups of facts in different parts of the world in such a manner that they can be satisfactorily carried on only through simultaneous work by scientists in a large number of countries. It is, of course, possible that such international coöperation could be organized through private initiative, and this has in fact been done in many branches of science. But there are other lines of investigation which governments, on account of the scientific institutions which they already control, are well prepared to undertake. A number of public conferences of a scientific

nature have been held, various standing committees and bureaus have been created which are supported by government contributions, and, moreover, a great many governments participate regularly, through official delegates, in international scientific congresses arranged for by private initiative.

Among the commissions and bureaus which have been reviewed above, there are a number whose functions may be called scientific. Bureaus like that of the industrial property union and the sanitary union have the duty of collecting reliable information and arranging it in a scientific manner. The functions of the metric bureau at Sèvres are of a strictly scientific nature. But in all these cases, and in the others reviewed, the information is gathered for the purpose of forming the basis of action by the governments who are members of the respective unions. There are, in addition to these associations and unions, a few whose purpose is purely informational and scientific. We cannot, of course, in this place deal with the numerous scientific associations of international extent, composed of private persons and not connected with governments through representation and financial support.

*The International Geodetic Association.*¹ On the initiative of the Prussian government a conference was convened in 1864 for the purpose of forming an association through which the geodetic work carried on by the various governments could be compared, harmonized, and rendered more efficient. Fourteen states were represented at this conference. It created a permanent organization composed of a general conference which meets every three years, a governing commission, and a central bureau. This last was located at Potsdam and placed under the direction of the Prussian institute of geodesy. The original purpose of the association was to standardize geodetic researches with respect to central Europe. Its scope was subsequently expanded so as to embrace all of Europe and then the entire globe, the ultimate purpose of the association being the absolute determination of the form of the earth. The organization of the union was

¹ Titmann and Hayford, "Conference of the Geodetic Association," in *Science*, December 7, 1906. Publications of the International Council for the Exploration of the Sea, Copenhagen, since 1903. On the international conference and council for exploration of the sea, *Geogr. Jour.*, Vol. XX, p. 316, and *Scott. Geogr. Mag.*, Vol. XVI, p. 299. *Bulletin of the Internat. Statistical Institute*, various places since 1886. Treaty of March 15, 1886, in *Archives diplomatiques*.

modified in 1886 by giving the international bureau an independent budget made up of contributions of the member states according to population. The control of the Prussian government over the bureau was rendered less direct by this measure, although the connection with the Prussian institute was maintained. At the present time the association has a membership of twenty states, and its annual budget averages \$19,000. The association does not fix the methods of observation or computation in any country; it controls only the processes used in its own central bureau and in the field work paid for from the association funds. But by virtue of the active interchange of ideas the union undoubtedly does exert a strong influence in making the methods used in various countries more nearly uniform and progressive than they would otherwise be.

In 1882 there was held at Paris an international conference for the determination of electric units. Twenty-five governments took part through official delegates, and resolutions were adopted establishing certain general rules with respect to the subject under consideration. Conferences of this nature have been held from time to time, in one or another of which all of thirty-six governments have participated. The last conference on electric units and standards met at London in October, 1908. Its object was to obtain international agreement on the three electric units, — the ohm, the ampere, and the volt. It resolved itself into three commissions: first, on electric units; second, on electric currents; and third, on a standard measure of light. A permanent international electrotechnical commission has been established, which met at the same time. This commission has under consideration the question of standardizing the nomenclature and the ratings of electric apparatus and machinery.

In 1884 an international conference was held at Washington for the purpose of fixing a prime meridian. This also was entirely a government conference, twenty-six countries being officially represented. It passed a resolution recommending the universal acceptance of the meridian of Greenwich as a prime meridian. Furthermore, it adopted a plan for a universal day. Under this arrangement the time in all parts of the world would be exactly the same, and it would become impossible to lose or gain a day by passing a certain meridian.¹

¹ Proceedings published at Washington, 1884.

The study of the causes, results, and concomitant phenomena of earthquakes constitutes a subject which cannot be satisfactorily dealt with on the basis of the scientific experience of a single nation. The science of seismology is therefore essentially international. It is necessary to have a broad field of observation in order accurately to determine the natural laws involved in the phenomena ; as a matter of fact, the physical area affected by any serious disturbance is practically the surface of the entire globe. A first general conference on seismology was held at St. Petersburg in 1901, when it was agreed that the establishment of a public international union should be brought about. Accordingly, in 1903, there followed a meeting of official representatives of governments, through whom an international association was established. A *règlement* was adopted and a central bureau instituted at St. Petersburg. The conference also created a commission composed of delegates of each of the governments, who are members of the union. This body exercises a general supervision over the technical work of the association. Subsequent general conferences were held at Leipzig, 1904 ; Rome, 1906 ; and The Hague, 1907. The union at the present time includes fifteen governments.¹

Of great practical importance is the work of the international association for unifying the formulæ of potent drugs. Not only is medical science concerned in the establishment of universal formulæ of this kind, but it is evidently also of great importance to certain branches of the public administration — such as, for instance, that of criminal law — that there should be uniformity in such matters. At a conference held at Brussels in 1902, at which nineteen powers were represented, this international association was established, a commission formed, and a secretariate instituted at Brussels. A second conference, held in 1906, worked out a new convention, which was signed on November 29 of that year.

Of a more purely scientific nature is the work of the permanent council for the exploration of the sea, which is located at Copenhagen. This union was founded at Stockholm in 1899. At a subsequent meeting at Christiania, in 1901, the international council was established, together with a bureau and a laboratory. The governments interested, nine in number, are represented upon the council by two representatives each. The purpose of the bureau is to give uniform

¹ *Geogr. Jour.*, Vol. XXVIII, p. 81.

direction to hydrographic and biological researches in the ocean. Particular research work is also intrusted to it from time to time by the council. It is the function of the international laboratory to control the apparatus employed and to insure uniformity of methods on the part of investigators belonging to different nations, in order that the results obtained may be accessible and useful to all. The budget for 1907 was 102,425 francs. The expenses of the council are defrayed entirely by the governments who are members. Another organization of this kind is the international commission established to carry on the study of the polar regions. It was brought into being at a congress held in 1906, at which fourteen governments and a number of learned associations were represented. A similar object is pursued by the Baltic and White Sea conference, which met at The Hague in September, 1909.

It had been repeatedly suggested that there should be undertaken the joint elaboration of a map of the world, in which the principal civilized countries should participate. The suggestion was first taken up in the international geographical congress, which met at Bern in 1901. A committee appointed to develop a plan reported at subsequent congresses. Finally, an international commission was created, which met at London in 1909. At this conference twenty-four countries were represented. The plan adopted contemplates a map drawn upon the scale of one to one million, that is, about sixteen statute miles to the inch. Each sheet of this map will embrace an area of four degrees in latitude and six degrees in longitude. There will be twenty-four hundred of these sheets, and the entire map when put together will measure about one hundred by one hundred fifty feet. The commission will agree upon absolute uniformity in the system of notations. The practical value of this undertaking requires no emphasis.

*The Pan-American scientific congress.*¹ General scientific congresses, taking for their province the whole realm of human knowledge, are peculiar to America. The meeting of scientific men from all parts of the world, during the St. Louis exhibition, is well remembered as the first attempt to gather in one convention representative scientific men from all nations. But our neighbors to the south

¹ Trabajos y conclusiones del cuarto congreso científico (primero pan-americano), Santiago, 1909.

made the beginning in holding general scientific congresses on a continental scale. In 1898, through the efforts of the Argentinian scientific society and under the auspices of the Argentinian government, there was convened the first Latin-American scientific congress, in the city of Buenos Aires.

So successful was this first attempt that the idea took root and the scientific congress became an institution of American life. In 1901 the second congress met at Montevideo, followed in 1905 by the third, in the capital of Brazil. In all these congresses the government of the country of meeting acted as host, and the president and public ministers took part as honorary or active officers. Thus, from the first, the congress was impressed with a semipublic character, and governments were represented in it by specially designated delegates. This did not of course exclude the presence of representatives of universities and other learned bodies, as well as of private "adherents." These congresses served to establish closer bonds of union and of mutual friendship and understanding among the participating countries of America.

When the organizing commission of the fourth congress, in Chile, began its work, it was suggested that this congress should include all the nations of America, not only those using tongues of Latin derivation. This decision was a result of the efforts which had been made in the diplomatic conferences at Washington, Mexico, and Rio de Janeiro to establish relations of active friendship among all American countries. These had prepared the way for a union of American men of science. Thus the suggestion commended itself to the Chilean commission, and they inaugurated a new era in American intellectual life by making the scientific congress Pan-American in scope and character. Not only did they decide to include the United States among the nations invited, and thus to make the congress truly American, but they were guided by the concept of Americanism in the elaboration of the program. Accordingly it was planned that the congress was to occupy itself primarily with problems and conditions peculiar to the American continents. As this was the first meeting of the kind, a survey of the whole field of science in the New World was a proper work to be undertaken. For this reason many of the papers and discussions were occupied with the more general aspects of their subject. An effort was made broadly to determine the

tasks confronting American men of science at the present time. But in addition to this, many special investigations of scientific materials were presented.

The fact that governments were represented, and that most Latin-American countries had appointed their minister in Chile as head of their delegation, gave the congress a semidiplomatic character. This was accentuated by the election of diplomats to the principal offices of the congress. The congress was divided into nine large sections, each of which held separate meetings, and some of which had again to be subdivided in order to make it possible to present the papers that had been prepared for the occasion. Many resolutions were adopted, based upon studies presented by various delegates. It was also resolved that the president, secretary, and treasurer of any congress should constitute a permanent commission acting until the subsequent meeting, in coöperation with the committee on organization, whose duty it is to carry out the preparatory arrangements in the country where the meeting is to take place.

VI. INTERNATIONAL COMMISSIONS AND UNIONS FOR SPECIAL AND LOCAL PURPOSES

Common action on the part of a number of states to protect specific interests is becoming more and more frequent. In order to carry out the provisions of treaties or to make an investigation, temporary commissions have often been created, whose duties are confined to the accomplishment of a certain specific task. Of this nature were the commissions appointed to elaborate the provisions of the Vienna treaty of 1815, dealing with navigation. Separate commissions were appointed to prepare regulations for the Vistula, the Elbe, the Rhine, and the Ems. But though it would be interesting to study the organization and work of these temporary bodies, we shall have to content ourselves with a very brief review of those international commissions for special or local purposes, which have a more permanent duration. An interesting attempt to regulate the jurisdiction over boundary rivers, through the institution of an international tribunal and the determination of its relations to the national courts, is contained in the convention relative to the navigation of the Rhine, concluded on October 17, 1868, between six riparian states. It provided for a tribunal of Rhine navigation, in which all the treaty states were represented.

The interest which a number of central European states have in the navigation of the Danube has led to the conclusion of a series of treaties and conventions upon this matter, beginning with the treaty of Paris in 1856. By this treaty there was created a European Danube commission, which was charged to plan and carry out important works for improving the navigation of the lower Danube. Its duration, originally limited to two years,—a strangely inadequate period,—was subsequently extended, until finally, by the treaty of London in 1883, its powers were prolonged for twenty-one years and for periods of three years thereafter, subject to denunciation by any of the treaty powers. The commission is composed of representatives of the ten treaty states ; its permanent offices are at Galatz. Its resources are supplied by an equal tax imposed by the commission itself, by a majority vote, upon the shipping of the lower Danube ; it is guaranteed complete independence from undue interference on the part of any riparian state, and has the right to use its own distinctive flag. Very important and useful works have already been executed under its superintendence.¹

The Peking peace protocol of September 7, 1901, provides for the improvement of the navigation of two Chinese rivers under the superintendence of international commissions.

By the general act of the Berlin conference (1885) there was instituted an international commission of the Kongo. The duty of this commission is to superintend the execution of the treaty provisions in favor of the equal rights of navigation in the Kongo basin. It is provided by the act that the commission is to be composed of one representative of each treaty power, to be independent of the riparian governments and to have the usual diplomatic privileges of inviolability. Thus far, however, the commission has not been constituted for work. A similar commission was instituted by the treaty of Constantinople, of 1888, for the purpose of supervising and enforcing the observance of the neutrality of the Suez Canal ; it is made up of the consuls of the treaty powers in Egypt.

Another instance of international coöperation is found in the union

¹ Orban, P., *Étude de droit fluvial international*, Paris, 1896. Arntz, *Régime international du Danube*. Bonfils, *Droit int. publ.*, § 528. Bergès, A., *Du régime de navigation des fleuves internationaux*, 1902. "Règlement pour l'amélioration du Whang-pou," in *Archives diplomatiques*, Vol. LXXXI, p. 28. Compare, also, the Canada-United States International Waterways Commission.

for the purpose of maintaining a lighthouse at Cape Spartel, in Morocco. Eleven powers are members to this agreement, which is carried out under the superintendence of the consular corps at Tangier. As a result of the treaty of Algeciras (1906) international supervision over Moroccan affairs has been very much extended. We may note especially the international control of the police, and the international bank of Morocco.

In case of serious disorganization in the financial system of the state, joint international action for the purpose of reform has been frequently resorted to. The Egyptian commission for financial affairs (*caisse de la dette*), which was instituted by treaty in 1880, is composed of representatives of the principal creditor nations. The amortization and conversion of the Egyptian debt is under its control, and its consent is necessary to enable the Egyptian government to incur any expenditures not authorized under the original treaty. A similar institution for Turkish finance has existed since 1878. In 1897 there was created an international financial commission for the control of Greek finances. The Macedonian financial *règlement* of 1906 provided for a fiscal commission composed of delegates of Germany, France, Great Britain, and Italy, of the civil agents of Russia and of Austro-Hungary, and of the Turkish inspector general of finance. The commission was to superintend the regular collection of the taxes, and its assent was necessary to the validity of the Macedonian budget. It had the right to nominate for each vilayet an inspector to superintend the fiscal agents employed by the Turkish government. As a result of new fiscal arrangements made in 1909 the commission was dissolved, and the agents of Great Britain, France, and Italy entered Turkish service as foreign financial advisers. For the purpose of facilitating the payment of the indemnity installments, as provided for in the Peking protocol of 1901, there has been instituted at Shanghai a commission of bankers, upon which all the treaty powers are represented.¹

In connection with these unions for local and restricted purposes, it also seems proper to mention two important organizations, which aim to unify and make interchangeable the coinage of the member

¹ The Macedonian *règlement*, in *Archives diplomatiques*, Vol. XCV, p. 355. Murat, *Le controle international sur les finances de l'Égypte, de la Grèce et de la Turquie*, Paris, 1899. Engelhardt, in *Revue de droit international*, Vol. XV, p. 340.

states. Such are the Latin monetary union,¹ formed in 1865, and comprising France, Belgium, Italy, Switzerland, and Greece, and the Scandinavian monetary union, formed in 1873, and composed of Denmark, Norway, and Sweden. The original purpose of the Latin union was the maintenance among the countries composing it of the double standard at the ratio of $15\frac{1}{2}$ to 1. The great subsequent depreciation of silver caused many difficulties to the union. A conference meeting in 1874 decided upon a temporary suspension and permanent limitation of silver coinage. In 1885 Belgium threatened to withdraw from the union, but was ultimately induced to continue a member, on the basis of several concessions. Subsequent conferences were held in 1893, 1898, 1902, and 1908. The matters determined by these conferences related to means for preventing the exportation of coin, and for regulating the amount of fractional currency to be allowed each country, as well as the per capita amount of silver coin to be issued in each. This latter item was fixed at 16 francs per inhabitant by the conference of 1908. In 1892, upon the initiative of the United States, an international monetary conference met at Brussels for the purpose of discussing means for the maintenance of a suitable currency with the double standard. This conference did not lead to the adoption of international acts or treaties.]

¹ Willis, *A History of the Latin Monetary Union*, Chicago, 1901. Russell, H. B., *International Monetary Conferences*, New York, 1898. Van der Rest, "L'union monétaire latine," in *Revue de droit international*, Vol. XIII, p. 5.

CHAPTER III

THE INTERNATIONAL UNION OF AMERICAN REPUBLICS

It is not our purpose in this chapter to follow in detail the history of the relations between the different republics of America, nor even the development of the idea of a specifically American tendency in international law and diplomacy. But as a part of the present study a brief presentation of the proceedings and results of the American conferences and of the international administrative organs created by them will be indispensable. The American union is distinguished from others by the universality of its purposes and by the geographical limitation of its membership, but the action of its conferences and organs illustrates the same principles and subserves the same need for coöperation which we have observed in other cases.

The invitation for the first Pan-American conference at Washington was issued on the basis of the Act of Congress of May 24, 1888. In this act the plan of coöperation between the American powers was outlined in the following language: "The President of the United States shall set forth that the conference is called to consider :

" First : Measures that shall tend to preserve the peace and promote the prosperity of the several American states.

" Second : Measures toward the formation of an American customs union, under which the trade of the American nations with each other shall, so far as possible and profitable, be promoted.

" Third : The establishment of regular and frequent communication between the ports of the several American states.

" Fourth : The establishment of a uniform system of customs regulations in each of the independent American states to govern the mode of importation and exportation of merchandise, and port dues and charges ; a uniform method of determining the classification and valuation of such merchandise in the ports of each country, and a uniform system of invoices ; and the subject of the sanitation of ships and quarantine.

"Fifth: The adoption of a uniform system of weights and measures, and laws to protect the patent rights, copyrights, and trade-marks of citizens of either country in the other, and for the extradition of criminals.

"Sixth: The adoption of a common silver coin, to be issued by each government, the same to be legal tender in all commercial transactions between the citizens of all of the American states.

"Seventh: An agreement upon and recommendation for adoption to their respective governments of a definite plan of arbitration of all questions, disputes, and differences that may now or hereafter exist between them, to the end that all difficulties and disputes between such nations may be peaceably settled and wars prevented.

"Eighth: And to consider such other subjects relating to the welfare of the several states represented as may be presented by any of said states which are hereby invited to participate in said conference."

This general plan of common action is the result of long discussions in both Houses of Congress, of motions and resolutions offered by different senators and representatives, and of the political ideas of Blaine as set forth especially in his circular letter concerning a peace congress to be held in the year 1882.¹ The act cited above was adopted during the administration of President Cleveland by the action of a Republican Senate and a Democratic House. As the initiative in this matter was traced back to Blaine, who had been Secretary of State in 1881, and as the policy was in general a part of Republican views on our economic and commercial relations with the Old World, there was a strong opposition to the passage of this measure by the House of Representatives. The President himself did not sign the bill, but neither did he veto it, so the measure became a law without his coöperation. When the conference, thus called, met at Washington, the governmental power had again passed entirely into the hands of the Republicans. Blaine as Secretary of State under Harrison acted as president of the conference, an office which he exercised in person. Without doubt he was the leading personality in this meeting, as well as in the general movement. These facts explain why the entire merit of originating the Pan-American idea is often attributed to him.

¹ International American Conference, 1889, Reports and Discussions, Washington, 1890, Vol. IV, p. 255.

When, however, we consider the individual parts of the act of 1888 in their development, it is apparent that this policy did not spring from the mind of any single statesman. The first suggestion of coöperative action among the American powers took the form of a plan for the arbitration of international controversies. This theme is contained in the first and seventh paragraphs of the section of the law of 1888 which lays down the purposes of the conference. In the year 1881 the government of Colombia had invited all American states to send delegates to a meeting where this matter should be discussed,¹ but on account of the war between Chile and Peru this conference could not be held. The circular letter of Secretary Blaine, already referred to, is entirely taken up with this purpose of arbitration and does not go beyond the idea of fostering international peace. In the House of Representatives this point of view is emphasized in the resolutions presented by Worthington and by McKinley (1886); and Logan represented a similar sentiment in the Senate. These resolutions confine themselves to favoring the creation of international courts of arbitration for America.

The commercial aspect of Pan-American relations was first discussed in the House in 1884. In this year Congress passed an act creating a commission of three members who were charged to make a careful study of the commercial relations between the different American republics.² In a report addressed to the committee of the Senate and dated March 26, 1884, Secretary of State Frelinghuysen favored the policy of concluding a series of reciprocity treaties; he, meanwhile, expressed some doubt concerning the practicability of a general American customs union. The Act of 1888, however, mentioned such a union as one of the purposes of the conference. The Forty-ninth Congress, in which the Democratic party had a strong majority, had taken an entirely negative attitude in this matter; the Fiftieth, through which the Act of 1888 finally came into being, contained a strong minority in the House, which opposed the policy of using diplomatic means for the development of commerce.³

The first international conference of American states held its inaugural session on October 2, 1889, all the independent American

¹ Conference, 1889, Reports, Vol. IV, p. 218.

² *Ibid.*, p. 299.

³ Minority report (Mr. Perry Belmont) in Conference, 1889, Reports, Vol. IV, p. 320. Majority Report, Vol. IV, p. 315.

states being represented. The matters for discussion were distributed among sixteen standing committees; in general the plan outlined in the Act of 1888 was made the basis of this division, although there was added a discussion of private international law. Four of the committees considered means of transportation by land and sea, while others dealt with such matters as the customs union, customhouse regulations, sanitary administration, extradition, and a Pan-American bank.

Although the conference ultimately passed a resolution couched in very general terms, it soon became apparent to all delegates that the idea of an American customs union would have to be abandoned.¹ The delegates of Chile and of Argentina insisted that the term "customs union" could refer only to a complete Zollverein, such as that of the German states; they accordingly brought in a minority report in which it was definitely declared that the project of a customs union among the American states must be rejected. However, it was not at all the attitude of the North American delegates to urge the creation of a customs union, and at no time was this matter pressed. The American representatives argued that this expression ought to be interpreted in connection with the other parts of the act, and that it merely indicated that considerations of a commercial nature were to be taken up by the conference. The majority report of the committee, which was accepted by the conference, assumed the following conservative form: "To recommend to such of the governments represented in the conference as may be interested in the conclusion of partial reciprocity treaties of commerce, to negotiate such treaties with one or more of the American countries with which it may be to their interest to make them, upon such terms as may be acceptable in each case, taking into consideration the special situation, conditions, and interests of each country, and with a view to the promotion of the common welfare of all."

Seldom did the conference in its further action pass beyond such general resolutions and recommendations. The territory was too new, the principle of coöperation was untried, and the questions of joint action were exceedingly complicated. It was felt that the mutual

¹ Blaine's Letter, June 19, 1890. *Sen. Doc. 158*, Fifty-seventh Congress, first session. Report of Committee on Customs Union, Conference Reports, Vol. I, p. 103.

relations of the powers involved would have to be determined more definitely before a conference could undertake the elaboration of definite projects for treaties and laws with a feeling of complete assurance as to results. The conference adopted only one treaty project, — that dealing with the obligatory arbitration of international controversies.¹ Though the conference, with the exception of the delegates of Mexico and Chile, had accepted this project, no state was bound diplomatically through this action; the adoption was purely *ad referendum* and required ratification by the individual governments. The conference gave to this project a very advanced character; obligatory arbitration was to be decreed in all controversies, with the sole exception of those in which the independence of a country was endangered. But even in the latter case arbitration was to be obligatory upon that party whose action threatened the independence of another country. The treaty also announced the principle that in America the right of conquest shall have no application, and therefore declared invalid all cessions of territory which had been obtained through the presence of an armed force. The principal advocates of this project, the delegates of Argentina and Peru, tried to weaken the objections urged against it through the argument that though the treaty made arbitration obligatory, it did not introduce a compelling power nor permit intervention on the part of outside nations. Under this interpretation the term "obligatory" would have addressed itself rather to the conscience of the parties to the controversy; it did not invite the action of outside powers to secure the enforcement of the duty. It does not seem that the delegates were entirely clear in their minds concerning the relations of such a treaty to the sovereignty of the individual states. The acceptance of an arbitration project of so broad a character is in large part due to the personal influence of Secretary Blaine, who himself took part in the debates and made several enthusiastic and forceful appeals in behalf of international peace.

The project was signed by the delegates of eleven republics, among them Brazil, Bolivia, and the United States; but on the date fixed for final ratification, May 1, 1891, not a single government had sanctioned the treaty. Attempts were made to extend the term. In his annual message of December 19, 1890, President Harrison had urged that

¹Conference Reports, Vol. II, p. 259.

the United States, true to its initiative, should adopt the treaty, but it was never ratified by any of the powers.

Resolutions of the conference containing recommendations to the various American governments were adopted, concerning the following matters: postal communication, survey of the Pan-American railway, administrative customs regulations, harbor dues, international monetary affairs and a Pan-American bank, patents and trade-marks, weights and measures, sanitary regulations, extradition treaties, and international private law. Although in general the preparatory work of the conference was inadequate, nevertheless many of these subjects were dealt with in considerable detail and in the light of experience. Thus the report of the committee on customs regulations made a number of specific and practical recommendations. The reports on inter-continental communication, too, were of considerable value, as they set forth clearly the condition of existing and possible means of transportation by sea and by land. In the matter of patents and international private law the conference confined itself to recommending the further adoption of the treaty which had been elaborated by the South American congress of international law at Montevideo in 1888.¹ In regard to sanitation, it pursued a similar course and favored the adoption of the projects which had been worked out by the sanitary conference of Rio in 1887, and of Lima in 1889. In these matters, therefore, the conference of Washington based its recommendation entirely upon the products of South American labors in the field of internationalism.

Considered in its entirety, the conference of Washington represents a new phenomenon in international life. Hitherto the world had known only two kinds of international meetings: congresses of a diplomatic character, called together for the purpose of dealing with a definite political situation, usually after a great war, and for the purpose of determining the bases for a treaty in which the different national interests would be balanced and adjusted; or conferences partially diplomatic and partially technical in character, summoned for the discussion of a definite group of economic or social interests, such as, for instance, the various European conferences dealing with postal, telegraphic, or railway affairs. The conference of Washington

¹ Conference, 1889, Reports, Vol. II, pp. 555, 874. *Actas del congreso sudamericano de derecho internac. privado*, Buenos Aires, 1889.

differed from these established categories of international meetings in that, on the one hand, it was not convened for the settlement of a specific diplomatic problem, while on the other it did not confine itself to the discussion of any definite interest or group of relations. It had the character of a general advisory meeting of the representatives of neighboring countries, summoned for the purpose of bringing these countries into closer touch with one another and of arriving at a better mutual knowledge of their various relations and interests, in order to provide a secure basis for the eventual conclusion of treaties and for coöperation between these governments. It was therefore a foregone conclusion that such a conference, the first of its kind, would not be rich in specific results. More intimate relations would first have to be established and the countries would have to gain clearer views concerning the tendencies and probable effects of international arrangements among American states before definite action could be expected. But it could also be hoped that a free interchange of opinions among leading diplomats and statesmen of an entire continent would not be without desirable results in bringing about a better mutual understanding.

The direct influence of the resolutions of the conference of Washington upon the legislative and administrative conditions in the different American states was indeed very small. There was common action in the creation of an intercontinental railway commission and of the bureau of American republics. The former was nominated shortly after the conclusion of the conference, and it received its financial means through contributions from the United States and a few other governments. The commission caused important investigations and surveys to be made, and prepared a detailed technical report which was submitted to the second conference.

Of great importance was the creation of the International Bureau of the American Republics. This step, incidentally suggested in the report of the committee on customs regulations, caused the conference to provide for the creation of such a bureau "for the prompt collection and distribution of commercial information." The bureau was to be established in the city of Washington and was placed under the supervision of the American Secretary of State. The commercial and industrial information thus collected was to be published in an organ called *The Bulletin of the International Bureau of American*

Republics printed in English, Spanish, French, and Portuguese. The different governments assumed the duty of furnishing correct and detailed information concerning their commercial and customs legislation, as well as all statistical data bearing upon these matters. The annual budget of the bureau was not to exceed \$36,000; its income was to be furnished by the different countries, in proportion to their population. It was provided that this union of American republics was to remain in force for ten years; and unless twelve months before the end of this term a majority of the member states had announced their withdrawal, it was to continue for an additional term of equal length. Immediately upon the conclusion of the conference, the bureau was organized by the American Secretary of State, a director being appointed on August 26, 1890.

The conference of Washington did not pass any resolution concerning future meetings of American diplomats. It was, however, generally recognized that this conference constituted only an initiative which would be followed sooner or later by similar meetings for the further elaboration of the general ideas adopted at Washington. The accession to power of the Democratic party in 1893 did not favor the continuance of the work with which Blaine's name was so prominently connected. In the summer of 1896 the Mexican republic attempted to convene an international American congress. On the day set for its opening, however, there were present only the representatives of Venezuela and of the five Central American republics, so that the conference did not come into being. The American minister to Mexico had been instructed by his government to take part in the congress, should it actually be convoked. The idea had been expressed that this congress would consider the meaning and application of the Monroe Doctrine. President McKinley, educated in the political traditions of Blaine, was favorable to the Pan-American movement, but shortly after his accession to the presidency the United States became involved in the war against Spain. For some time during and after the war there was considerable doubt as to what influence it would exert upon the relations of the United States to the Spanish-American republics. Many publicists surmised that the hostilities would bring about an awakening of sympathy for the mother country among her ancient colonies, and that on the basis of the contrast between Latin and Germanic stock there would be

developed a more conscious opposition between North and South America. Conjectures of this kind were, however, soon to prove fallacious. There was indeed a short ebullition of sentiment in favor of Spain, but it is doubtful whether it exerted any strong influence in modifying existing political and economic relations. A Hispano-American congress held in Madrid in 1900, though well attended and used as an occasion for expressions of loyalty to Spain, did not lead to any definite results. The Spanish-American War, on the other hand, through making the United States the sovereign power in Porto Rico and giving her a species of protectorate over Cuba, created among the North-American people a far greater interest in the Spanish-American world than they had ever felt before.

In his message of December 5, 1899, President McKinley suggested that, in view of the incomplete results of the first Pan-American conference, it might be desirable to hold a second meeting of this kind. Following out this suggestion, the Department of State sent a circular letter to its various diplomatic representatives in Central and South America. The Mexican republic now repeated its invitation, and on October 22, 1901, the second conference of American republics met in the city of Mexico. This time, too, all the American republics were represented.

At Washington controversy had centered upon questions of commercial policy. The suspicion that the United States was attempting to use diplomatic means in order to conquer South American trade had led the Chilean and Argentine representatives to defend their economic freedom against surmised dangers by making a positive declaration of commercial independence. On the other hand, the far-reaching project of arbitration was opposed only by Chile, and did not become a source of general strife and antagonism. But in the Mexican conference all this was reversed, and the question of arbitration became the focal point of debate. The perennial conflict between Chile and Peru concerning the provinces of Tacna and Arica had become more and more acute. Chile, though bound by treaty to institute a plebiscite in which the inhabitants of these provinces might express their preference with respect to the country to which they would rather belong, had refused to make any such submission of the question of sovereignty to the local population, except on terms not acceptable to Peru. The latter had therefore made repeated urgent

representations, and now insisted upon submitting the entire question to an international tribunal. On all occasions, therefore, Peru was ready to favor a general obligatory procedure of international arbitration. Brazil also had acquired more definite views upon this matter, although she looked at the question from the opposite position. When she came into territorial conflicts with her western neighbors, the latter had invoked the principle of arbitration against the great republic of the Amazon.

During the first weeks of the conference the relations among the delegation at Mexico were uncomfortably strained. The delegates of Chile made no secret of their intention to withdraw from the conference, should it even enter upon a discussion of obligatory arbitration. The more extreme representatives of the opposing view insisted upon the adoption of their proposals before they would agree to the consideration of any other topics on the program. The matter was further complicated through the fact that the defenders of the obligatory principle were not agreed among themselves whether the treaty to be concluded should refer only to future controversies, or whether the settlement of existing conflicts should also be provided for. When it became apparent that the large committee upon arbitration could not successfully cope with the problem, the whole negotiation was intrusted to a subcommittee of seven representative members. This small group exhausted all the expedients of suasion and diplomacy. After long negotiations and careful discussion they finally brought forward a plan of compromise. Through the diplomatic tact of some leading members the elements of opposition had been quieted and a common mode of action made possible. Thus one of the greatest difficulties by which an international conference has ever been confronted was solved by the means of diplomacy and by a mutual forbearance among forces in decided opposition to each other on questions of principle. The solution adopted took the following form: The conference accepted the suggestion of the delegation of the United States, according to which all American republics were to declare their adhesion to the Hague treaty of arbitration of 1899. In this manner the general principle of arbitration was given a measure of recognition. In the second place it was agreed that those states which stood for an obligatory procedure should sign among themselves a project for a treaty, according to which all their controversies were to be

submitted to the Hague tribunal, with the exception of such conflicts in which their national honor and independence were involved. These two treaty projects were to be communicated to the different governments through the Mexican minister of foreign affairs. The solution suggested by the committee was adopted. All the republics accepted the protocol concerning the Hague treaty, and the treaty project for obligatory arbitration was signed by the representatives of the following states: Argentina, Bolivia, Guatemala, Mexico, Paraguay, Peru, Salvador, San Domingo, Uruguay, and Venezuela. The governments of Mexico and of the United States undertook to negotiate for the admission of the other American republics to the Hague conference.

Of great practical importance was the adoption of a treaty project for the purpose of establishing international arbitration in all cases of pecuniary claims. According to this treaty the parties agreed "to submit to arbitration all claims for pecuniary loss or damage which may be presented by their respective citizens, and which cannot be amicably adjusted through diplomatic channels, when said claims are of sufficient importance to warrant the expenses of arbitration." It was provided that the parties could take advantage either of Article 26 of the convention of The Hague, which arranges for the submission of cases to the permanent tribunal; or of Article 21, should they prefer that a special arbitration commission be organized for the particular case. The treaty was to come into force upon ratification by five states, and the term of duration was fixed at five years.¹ The project was signed by the delegates of all the republics present in the conference at the time, that is, all except Brazil, whose delegate had died on December 10, 1901, and Venezuela, which had withdrawn from the conference on January 14, 1902.

The principle recognized in this treaty—that controversies founded upon private claims of a pecuniary nature should be settled by arbitration—had already for a long time been acted upon in the diplomatic intercourse among the American republics.² On many occasions when a number of claims of this kind had accumulated between two states, an arbitration commission was instituted by special treaty and the

¹ Second Int. Conf., *Sen. Doc. 330*, Fifty-seventh Congress, first session, p. 139.

² See extracts from the documents in Moore, *History and Digest of International Arbitrations*, Washington, 1898.

controversies were thus adjusted.¹ Moreover, a large number of controversies of this kind were constantly being settled through the ordinary means of diplomatic action. Thus the new treaty gave definite and permanent form to a practice that had gradually grown up. Inasmuch as it provided for the reference of such cases to the Hague tribunal and made the latter the regular court for controversies between American states arising out of private claims, it may well be considered an important milestone in the progress of the world toward a normal and continuous application of international law.

After these difficult political questions had been disposed of, the conference made rapid headway upon the other subjects of discussion. Questions of commercial policy again occupied its attention. The system of reciprocity which the first conference had advocated in so conservative a manner had brought but little fruit in the intervening period; for although the McKinley tariff law had, under Blaine's influence, provided for the conclusion of reciprocity treaties, and such arrangements had been made with Brazil, the Dominican republic, the Central American states, and the West Indian colonies of England and Spain, nevertheless actual commerce was influenced only in a small degree by these measures, and, finally, the entire system was done away with by the Wilson law of 1894. In very reduced proportions the system was again included in the Dingley law of 1898, but the reciprocity treaties which American diplomatic representatives succeeded in obtaining from South American republics did not get beyond the Senate of the United States, which body at that time confined its action in such matters almost entirely to opposition.

It was therefore to be expected that the Mexican conference would not take any detailed action with respect to commercial policies. The committee on commerce and reciprocity contented itself with pointing out the desirable results of a general better understanding among the American republics, which would proceed from closer commercial relations. The latter could best be aided by "an adhesion to the system of celebrating treaties of commercial reciprocity, as a favorable foundation for the encouragement of the sentiments of union among the republics of America, with the understanding that these treaties be

¹ For example, treaties between the United States and Ecuador, 1862; Peru, 1863; Venezuela, 1866; Chile, 1892.

founded upon a careful study of the interests of the nations that may conclude them, so that the concessions granted in them may be mutually compensated, in order that they may be permanent and may constitute in a lasting manner a facility for international trade." But as the elaboration of a system of reciprocity was evidently not feasible at the time, the conference directed its attention rather toward the details of international instruments of commerce and transportation. Resolutions were adopted concerning the development of communication by sea and by land, especially through the construction of the Pan-American Railway, the simplification of customs and harbor regulations, the exchange of full reports concerning trade and industry, and the improvement of the sanitary service in the ports. The idea of a Pan-American bank also received the support of the conference. Although general action in the matter of commercial treaties could not be expected any more than at the first conference, nevertheless the delegates acted with greater confidence in their attempts to do away with various kinds of petty impediments to commerce such as frequently exist in the regulations of the customs administration. The conference recommended the following improvements: Uniform regulations for the entry, dispatch, and clearance of vessels, and simplification of manifests and invoices; adoption of a simple and uniform system for declarations of merchandise forwarded in postal parcels; the facilitation of the transit of goods; the simplification of charges collected from merchant vessels, and of formalities respecting the entry, clearance, loading and unloading of ships. The second conference further resolved that there should be called, within a year from its adjournment, a customs congress of the American republics, which was to take under consideration the various recommendations made by the Pan-American conference. It also favored the organization of a permanent customs commission, composed of individuals possessing technical and expert knowledge, who were to compare and study the customs and tariff laws of the nations of America, in order to suggest measures which might simplify customhouse formalities and facilitate mercantile traffic.

In connection with the reform of international sanitation the successful work of the United States in Havana, Santiago, and other Cuban towns had given rise to a general demand for the extension of such thorough methods in the suppression of epidemics in both of the

American continents. The basis of the action of the conference in this matter was the hope that, through a common procedure and mutual support, the sanitary condition of the different ports might be improved to such an extent that the strict enforcement of a protective quarantine would become more and more superfluous. In addition to general requirements with respect to mutual notification in cases of epidemics, the conference resolved that within a year the governing board of the bureau of the American republics should convoke a conference at Washington, in which the sanitary authorities of the different republics should be represented, for the purpose of discussing and proposing uniform treaty regulations. It was also decided to establish an international sanitary bureau at Washington, composed of at least five members to be nominated by the sanitary conference.

The report of the commission on the intercontinental railway, on the basis of surveys made in the year 1899, estimated the cost of the fifty-four hundred miles yet to be constructed at \$174,000,000 in gold. The conference decided that in order to carry on the investigations and propaganda thus begun, a commission of five members should be appointed. Such a commission was then immediately nominated by the president of the conference. It consisted of two North Americans and of three diplomatic representatives of other republics at Washington.

In the matter of the elaboration of treaty projects the Mexican conference went much farther than her predecessor of Washington. The treaties concerning arbitration have already been mentioned. Further treaty projects were adopted concerning the following matters :

First, the extradition of criminals. This treaty is based on the same principles which had already been adopted in treaties between the United States, Argentina, and Mexico ; it also included as causes for extradition anarchistic plotting and agitation, in so far as the latter are specifically defined as crimes by the legislation of both countries concerned.

Second, the codification of public and private international law. This treaty empowered the governing board of the bureau of American republics to nominate a commission of five American and two European jurists for the purpose of preparing a code of public and private international law. This code was then to be submitted to the

governments of the American republics for acceptance, and would eventually, as far as adopted, control the international relations among the American states.

Third, the practice of the learned professions. This treaty contained regulations for the mutual recognition of diplomas granted for professional study.

Fourth, patents and trade-marks.

Fifth, copyright and literary property.

Sixth, the rights of aliens. This project contained the following provisions: "The states do not owe to, nor recognize in favor of, foreigners, any obligation or responsibilities other than those established by their constitutions and laws in favor of their citizens. Therefore the states are not responsible for damages sustained by aliens through acts of rebels or individuals and . . . from acts of war whether civil or national, except in the case of failure on the part of the constituted authorities to comply with their duties. . . . Claims shall not be presented through diplomatic channels except in cases where there shall have been, on the part of the court, a manifest denial of justice, or unusual delay, or evident violation of the principles of international law." This project was not signed by the delegates of the United States, who declared that the principles contained in the treaty were not entirely acceptable to their government. The American delegates also withheld their signature from the project on patents and trade-marks.

In order to assure the periodicity of the conference, it was resolved that within five years a third conference should be convoked through the governing board of the bureau at Washington. It was also resolved that a special conference for the discussion of matters pertaining to the coffee industry should meet in New York within a year.

The second conference undoubtedly represents a decided progress in the development of American international relations. For the second time it had been possible, in the presence of radical differences of opinions, to find a basis for mutual understanding and for coöperation in a number of important matters. The conference, like its predecessor, lacked detailed preparatory work, so that it could not enter upon a thorough discussion of the technical side of international legislation and intercourse; but, on the other hand, there had by this time been developed a far greater feeling of security, of mutual

understanding, and of community of interest than had been the case at Washington. This was apparent from the fact that a large number of treaty projects were adopted. Some of the resolutions were indeed of such general and self-evident character that their promulgation was not due so much to a desire for practical action as to a wish of the conference to tide over certain difficulties and at least, apparently, to achieve definite results in matters where the public was not willing to be disappointed.

When we consider the specific results obtained on the basis of the resolutions of this conference in the years from 1902 to 1906, the outcome again is apparently of small importance. The adhesion of the American states to the Hague convention and their inclusion in the Hague conference of 1907 were accomplished through the mediation of the United States and Mexico, but these results might have been gained by individual negotiation, even without the protocol of the conference of Mexico. The convention for the settlement of pecuniary claims came into force on December 28, 1905, when five states (the United States, Guatemala, Peru, Salvador, Honduras) had ratified it. In the course of the following two years three further powers acceded to the treaty. The convention for obligatory arbitration had, in the beginning of 1906, been ratified by the following states: Salvador, Honduras, Guatemala, Uruguay, Mexico, Peru, and the Dominican republic; the extradition treaty had been adopted only by Guatemala, Honduras, Salvador, and Costa Rica; the treaty concerning the learned professions, by the five Central American republics, Peru, and Bolivia; the remaining treaties had been adopted only by the Central American republics, and in one case also by Bolivia. The principal states of South America—Chile, Argentina, and Brazil—had therefore, by 1906, not adopted any of the treaties framed at Mexico. Mexico had ratified two, while the United States had accepted only the convention concerning pecuniary claims.

In accordance with the resolution of the conference of Mexico, the first American customs congress met in New York in January, 1903.¹ Thirteen of the American republics were represented. The congress took up the matters referred to it under the resolutions of the Mexican conference, but after the delegates had expressed their

¹ Proceedings of the First International Customs Congress, *Sen. Doc. 180*, Fifty-seventh Congress, first session.

regret at the lack of adequate preparatory research, they contented themselves with a recommendation favoring the creation of a special commission for the study of the customs laws and regulations of the different American states. On the basis of this inquiry future congresses would then be able to engage in more detailed discussions and pass more specific resolutions. The congress also adopted a general resolution on the desirability of unifying the regulations and practices in the field of customs and harbor administration. As no funds were available, the bureau of the American republics could not create the commission called for, and the subsequent conference of Rio gave a different direction to the entire matter.

The third international conference of American states,¹ which was held in Rio de Janeiro in July and August, 1906, differed in some important respects from the two conferences which had preceded it. While it was left to the conferences of Washington and of the city of Mexico to arrange their own programs and to determine upon their rules and regulations, and while no limit was set to the length of their sessions, all these matters had, in the case of the Rio conference, been settled beforehand by arrangement of the governing board of the bureau of American republics. A complete program had been worked out, containing all the subjects upon which joint action was considered desirable. A set of rules and regulations, also, had been adopted, and the length of the session had been fixed so as not to exceed six weeks. The conference, when it convened, was therefore saved all the trouble and loss of time which a discussion of these matters would have made necessary, had they been left to the conference itself. The making of these preliminary arrangements had consumed several weeks at both Washington and Mexico.

The conference was further distinguished from its predecessors by a feeling, general among those who caused it to convene, as well as among those who composed its membership, that it would not be advisable upon such an occasion to inaugurate sweeping policies or to attempt radical changes. The action of former conferences had been more ambitious. Broad resolutions and long drafts of treaties had been adopted, but the various governments had given only moderate attention to these recommendations, so that most of them were not

¹ This part of the chapter is reprinted, with certain changes, from the *American Political Science Review* for February, 1907.

followed by authoritative action. The third conference felt that the time had come when it might pass over the more general problems and devote itself rather to detailed structural changes and to administrative arrangements, as well as to the improvement of conventions already existing.

The political part of the program contained the thorny problems of international arbitration and the collection of debts by force. The arbitration convention for the settlement of pecuniary claims, worked out by the Mexico conference, had meanwhile been approved by several of the American governments. The conference extended the period provided for the validity of this treaty until December 31, 1912. The general arbitration resolution offered greater difficulty. Some of the smaller South American states, like Peru and Bolivia, which believe that they have been injured by their stronger neighbors, have always demanded an arrangement for compulsory arbitration. In this they were supported on general principles by the government of Argentina. On the other hand, states like Chile and Brazil absolutely opposed the passage of a compulsory-arbitration resolution because of the existence of certain differences which they considered of such vital importance to their national life as to lie outside the field of arbitration. The fact that the Latin-American republics had been invited to the second Hague conference furnished a method of solving this difficulty. The Rio conference merely passed a general resolution recommending that the delegates to the next Hague conference be instructed "to secure the acceptance of a general arbitration convention so effective and definite that, meriting the approval of the civilized world, it shall be accepted and put in force by every nation."

The matter of the collection of debts by force of arms was disposed of in a similar manner. Argentina, whose government had recently restated the principle that force should not be used in the collection of pecuniary claims, was especially anxious to have the conference pass a resolution indorsing this doctrine as a part of general international law. But while the governments of the United States and of other creditor nations have generally abstained from diplomatic pressure in such cases, it was nevertheless considered unwise to pass a resolution of this kind at the conference where chiefly debtor nations were represented. The conference, therefore, carefully abstained from giving any indorsement to this principle other than recommending to

the governments represented that they consider the advisability of inviting the second peace conference at The Hague "to examine the question of the forcible collection of public debts and, in general, means tending to diminish conflicts which have their origin in pecuniary claims." It will thus be seen that the conference did not take the step of even advising the governments to instruct their delegates to bring up this matter at the Hague conference; in fact, it simply referred the proposal back to the individual governments to act upon it at their own discretion. The statement currently reported in the press that the so-called "Drago Doctrine" had been adopted by the conference was therefore absolutely unfounded.

The foregoing broad political questions contain the matter upon which differences of opinion and controversies might most readily be expected. That they were dealt with to the satisfaction of the great majority of the delegates, though disposed of in a manner that could not of course be considered final, indicates the spirit of accommodation and forbearance that characterized the gathering. The location of the next conference also became a question of considerable importance during the course of the session. The Argentine government had invited it to meet at Buenos Aires in 1910, but the delegates of Chile and Brazil led the opposition to fixing any date or place of meeting at this time, and the matter was finally left to the governing board of the bureau of American republics, which afterwards decided in favor of Buenos Aires.

The second important matter that occupied the attention of the conference was the reorganization of the bureau of American republics. The Mexico conference had passed a resolution calling for the construction of a separate building to be used by the bureau. The fact that, funds being now available, this construction would soon be undertaken, led to a general consideration of the organization and functions of the bureau. It was felt that the purely commercial and informational duties it had hitherto exercised were too narrow, and that this organ of the international union of the American states might be made far more effective in carrying out the resolutions of the conferences. It was recognized that the latter would in the past have received more attention and would have been acted on in more cases, had there existed a bureau or office charged with constantly bringing to the attention of the various governments the advisability

of adopting the recommendations or ratifying the conventions. The most important part of the reorganization plan was therefore to constitute the bureau virtually the executive organ of the international American conference. The bureau was instructed to compile and digest all information regarding the treaties and conventions between the American republics, and to assist in securing the ratification of resolutions and conventions adopted by the conferences. It was also to prepare complete reports upon problems specially committed to it by any conference, which are to be subjects of subsequent discussion and action. The lack of such preparation and the absence of sufficient data formerly made definite action on many topics of the program entirely impossible, since the session was too short for the delegates to gather such necessary information at the time. The bureau of American republics was also assigned the duty of furnishing to any person interested information concerning educational facilities in any of the American countries. The growing educational relations between the various American countries attracted the attention of the conference, and it was believed that this migration of students and teachers contained in it the promise of far closer relations between the American states. It was therefore thought advisable that the bureau should be constituted an office of educational information, so as to act as a mediator in fostering this important movement.

Another very important structural innovation is contained in the resolution calling upon the American governments to appoint, each in its own country, a permanent commission on Pan-American affairs. These commissions are to act as a nucleus for Pan-American interests in their own country, and are to assist the bureau of American republics in carrying out the duties laid upon it under the new arrangement. These structural changes introduced by the third conference, if carried out with intelligence and energy, will be very powerful in rendering the union of American republics permanently efficient. The principal defect of the organization heretofore was the lack of connection between the successive conferences, and the absence of any office or commission in the individual states which was specially charged with and interested in the carrying-out of the resolutions of the conferences and the fostering of Pan-American relations. With preparatory studies resting upon the broad basis of information gained from the various commissions throughout America, the conferences in the

future will be able to rear their work upon a solid foundation. The resolutions passed by them will not be allowed to fall into immediate neglect, but care will be taken to keep them before the various governments and to impress upon the latter the advisability of joint action on many important matters.

Structural changes and innovations were also involved in some of the other questions on the program. The Mexico convention on patents, trade-marks, and copyrights was reaffirmed, and there were established in connection with it two international bureaus—one to be located in Havana, the other in Rio de Janeiro—for the registration of patents, trade-marks, and copyrights. The conference further passed a resolution providing for an American center of sanitary information in the city of Montevideo. This center is to be in close touch with the sanitary commissions of the various countries, to collect and compare the experience of all these bodies, and to assist, with its advice, any of the commissions or local authorities which may call upon it.

By resolution the conference provided for a commission on public and private international law, which is to have its seat at Rio de Janeiro. This commission is to study, define, and formulate those principles of international action about which the American states in their practice are substantially agreed. It is also to be empowered to consider other parts of private and public international law, with the purpose of determining positive principles upon which the various governments may in future be brought to agreement. A complete codification of international law is not immediately expected, nor is it felt that a commission of this kind should undertake such a task ; but it might codify the results of American experience and practice, so as to create a definite American opinion on questions of international law for the guidance of our governments and eventually for the purpose of influencing the action of all civilized powers.

Considerable importance naturally attaches to the deliberations of the conference upon questions affecting international commerce. Here, too, a new organ was created, namely, a special section on commerce, customs, and statistics in the bureau of American republics. This section is placed under the direction of an expert, among whose specified duties there is the collection of information upon the customs and consular laws and regulations of the various American states. The simplification and uniformity of the rules of customs

administration is an end much to be desired for the encouragement of commerce ; and it is expected that the scientific work of the bureau will provide a firm basis for such reforms.

The passage of resolutions on the general subject of the conclusion of commercial treaties was not favored by the majority of the committee on commerce. The matters which they considered, in addition to the creation of the special section already mentioned, and which were formulated as resolutions and passed by the conference, were as follows : First, a plan, presented by the Chilean delegation, for the fostering of a more efficient merchant-marine service between the countries of America, which plan originally comprised the following elements : the American republics were to require that any navigation company desiring to enjoy the benefits of the system should submit its time-tables, sailing lists, and rate schedules to the control of some agency like the bureau of American republics ; that, in return for granting reasonable rates and giving good service, the companies were to receive favorable treatment in the various American countries ; they were, for instance, to be free from certain restrictions under the customs regulations with respect to the entry of vessels and goods, and they were also to be granted certain reductions in harbor dues and other navigation charges. Many evident difficulties in the way of this scheme presented themselves. Harbor dues and local imposts are often not under the control of the central government, they are also frequently pledged as security for some public indebtedness ; the matter of controlling the rates of international transportation is, moreover, one of extreme difficulty and complexity. The conference did not therefore indorse any final policy on this matter, but instructed the bureau of American republics to make a complete investigation of the subject and to suggest the basis upon which contracts with navigation companies for rapid and frequent communication at reasonable rates might be concluded.

Secondly, the conference passed a resolution for the purpose of fostering the development of the internal resources of the American republics. The bureau of American republics was directed to make a special investigation into the conditions of internal improvements and the laws governing land, mining, and forest concessions in the various American states ; and to present to the next conference a memorial upon the laws and administrative practices relating to these

matters. The purpose of this resolution was to broaden the scope of the work of the bureau of American republics, and to make the latter an efficient agent in assisting in the internal development of the American republics. Most of these are in need of both capital and immigrants, and by the diffusion of correct information concerning industrial conditions a valuable service may be rendered. A resolution was adopted recommending the calling of a conference to take some action in order to meet the crisis in the coffee trade, as well as a further one instructing the bureau of American republics to make an investigation concerning the fluctuations of exchange in the Latin-American states.

The above outline of the action of the third conference will show that, in so far as its work did not modify structural arrangements, it was mainly suggestive, calling attention to new lines of international activity, to new possibilities of development, and charging the bureau of American republics to make preliminary investigations.

None of the delegations represented at Rio pressed upon the others a positive or ambitious program. They were mutually receptive, and all seemed to recognize that the function of the conference was not to force any policy of a majority upon the nonconcurrent members, but, by impartial discussion, to arrive at a basis of action upon which unanimity would be possible. The actual debates and discussions were therefore carried on entirely in committee. All differences of opinion were settled there, and the committees' reports, having the unanimous indorsement of their members, were in turn adopted by the conference itself without a dissenting voice. In this respect the conference differed most radically from its predecessors, in both of which long and earnest debates took place in the plenary sessions. This time the discussions on the floor were mostly of a purely formal nature. During the earlier part of the conference resolutions thanking the presidents of the United States and of Mexico for their successful intervention in the Central American disturbances called forth a number of congratulatory addresses. Thereupon commemorative remarks upon men recently deceased, who had been prominently associated with Pan-American interests, engaged the attention. The coming of Mr. Root brought many festivities, as well as the formal session at which he delivered his memorable speech outlining the relations of the American states to each other.

The expressions of condolence for Chile on the occasion of the earthquake of Valparaiso occupied one of the later sessions. The larger number of resolutions were passed on the last day. Though, under the rules, the meetings of the conference were to be secret, representatives of the press and other visitors were freely admitted by common consent; but as all the real business was done in committee, the spirit of the rules was observed.

The manner in which the work of the conference at Rio affected treaty relations is encouraging from the point of view of international coöperation. In accordance with its resolution, committees have been appointed in nearly all the American countries. Their membership ranges from three to fourteen, and in every case they are composed of representative men prominently identified with the foreign relations of their respective states. In many of the countries these committees have held frequent meetings for the discussion of American international affairs and for the investigation of special problems comprised in the programs of the Pan-American conference. The treaties adopted by the Rio conference have received a great deal of attention on the part of the American governments, and they have been quite generally ratified.¹ The convention dealing with naturalization was ratified by twelve states, and in a number of other cases special agreements have been concluded between American states embodying the principles established by the Rio conference. The convention relating to arbitration of pecuniary claims, confirming the treaty of Mexico, was ratified also by twelve states. A large number of the countries, moreover, concluded with each other general treaties of arbitration, which include the matter of pecuniary claims. The United States, in the course of the year 1909, concluded general arbitration treaties with nearly all the Latin-American governments. The convention providing for the creation of an international commission of jurists, which is to draft a code of international law, was ratified by fourteen states. The date fixed for the convening of the commission was however allowed to pass, so that at the time of the fourth Pan-American conference the commission had not as yet been constituted. The convention relating to patents was ratified by eight states. But it is, of course, not merely in the specific ratification of treaties adopted by the Pan-American conferences that the usefulness of these meetings must be sought; for

¹ See note and diagram at the end of this chapter.

while they do lead to a direct modification of the treaty arrangements between the American states, they also indirectly assist in the establishment of principles of international policy and law which then gradually become the basis of treaties independently made between different American countries. Moreover, the common discussion of public problems reacts in many cases upon internal legislation, bringing the latter more completely within the purview of the more general experience and the wider outlook upon international affairs represented in the Pan-American conferences.

The fourth international conference met at Buenos Aires on July 12, under the honorary presidency of the Secretaries of State of the United States and of Argentina, Mr. Philander C. Knox and Dr. Victorino de la Plaza, and under the active presidency of Dr. Antonio Bermejo, the chief justice of the supreme court of Argentina, with the Argentine minister in Washington, Señor Epifanio Portela, acting as secretary general. The year of the conference coincides with that of the celebration of the centenary of independence in most of the Spanish-American countries, and the conference will stand in history as the most notable feature of this commemoration ; especially as it gives proof of the fact that the nations of this continent, moved by a common impulse to establish their independence, are still, after a century has passed, acting upon the basis of a common American policy. In accordance with the precedent established at Rio de Janeiro, the work of the conference was based entirely upon a program previously adopted by the governing board of the Pan-American Union in Washington and accepted by the member states. A preliminary program, which had been issued about six months before the meeting of the conference, contained a number of subjects which were ultimately omitted by the governing board for reasons of convenience and out of deference to the wishes expressed by one or the other American government. The preliminary program is nevertheless interesting as embodying subjects which may be taken up in future discussions. The governing board also adopted the rules and regulations which governed the conference. These rules followed in the main, and in nearly every detail, those which had been in force at the conference of Rio de Janeiro. The provision that the sessions of the conference were to be secret was however omitted, it being left to the conference itself to determine the matter of admission to its

sessions. The rules fixed the number of countries to be represented on the various committees, but the conference itself determined how many there were to be of the latter. As a result there were altogether fourteen committees, on six of which every delegation was represented.

The most notable regulation was that which provides that subjects not included in the program shall not be introduced unless there be a favorable vote of two thirds of the members. This regulation in connection with the character of the functions of the committee on general welfare brought about some discussion. There was, however, an almost unanimous feeling among the delegations that it was not desirable that new business should be introduced at all. A country wishing to bring before the conference any subject may in due time propose its discussion and ask for its inclusion in the program. As international conferences are not composed of legislators acting to a certain extent *sui juris*, but of delegates ruled by the instructions of their governments, it is not only desirable but absolutely necessary that the program of subjects to be discussed should be known beforehand by all the governments, in order that they may study them and give instructions thereon to their representatives. This principle affects the functions of the committee, which, according to the regulations, is to consider the general welfare. The nature of its functions has not been entirely clear. Is it to deal only with the immediate welfare of the conference and of its members themselves, taking up questions which affect their convenience and comfort? Or, going to the other extreme, is it to consider and report upon general business which affects the welfare of the entire continent? Accepting the latter view, a delegate of Paraguay argued that every country ought to be represented on this committee, considering that by common accord the congress might modify its program and take up some new subject interesting to all American countries. Later on another delegate spoke at length upon the desirability of having such a committee, which could deal with the broader aspects of American policies. He cited an expression used by Señor Nabuco in the conference of 1906, when, speaking of the committee "on the general welfare of the continent," he said that "to it pertain all the measures and plans not dealt with in the program, and all ideas of a unanimous character, so to speak, advanced in the interest of our hemisphere." In that conference Señor Nabuco also said that "the committee on the continental

welfare looks after everything not foreseen in regard to the good relations between the American countries." It is evident that whatever interpretation may be given to the character of this committee, its functions will in the nature of things be more restricted than the name implies. The general welfare of the continent is the subject which the entire conference deals with, but it is necessary that the governments should know beforehand what aspects of the general welfare are to be considered, in order that they may form a definite opinion thereon. The aspects so selected will be embodied in the program, and their consideration will be divided among the different committees of the conference. It is unlikely that a conference will ever vote the taking-up of an entirely new topic which has not been considered by the governments, unless it be of decidedly minor importance. Matters of a relatively unimportant nature may from time to time be referred to the general-welfare committee, if admitted by a two-thirds vote in the conference; but it is not in accordance with the character and the practice of the international union to bestow upon such a committee the function of introducing, of its own motion, matters which it might deem of general interest, nor was such a practice at all in the mind of Señor Nabuco when he made the statements cited above. Whenever the question arises as to whether a certain motion constitutes new business, it is proper and in accordance with practice that the question be submitted first to the committee on rules and regulations. Only in cases where there is no doubt as to the subject matter being included in the terms of the program, but where no special committee has been provided for it, should such business be directly referred to the committee on general welfare, unless indeed the introduction of some new matter has been expressly sanctioned by a two-thirds vote. The proper time for the governments to consider what aspects and features of the general welfare of the continent they desire to have discussed, is the period when the program for the conference is being formed by the governing board of the Pan-American union.

In connection with the fourth conference some very interesting questions arose as to the rights which flow from membership in the union. As the relations between the governments of Argentina and Bolivia were temporarily strained at the time when the invitations for the conference were being issued, a doubt came on as to whether

a country which had broken off its diplomatic relations with the government which is to act as the host of the conference is, nevertheless, by virtue of its membership, entitled to send a delegation. This question was resolved in the affirmative, and through the intermediation of the governing board of the Pan-American union an invitation was extended to Bolivia to send representatives to the conference. The plenary rights of membership at all times and under all conditions were thus established, although in this particular case Bolivia ultimately failed to avail herself of the right to take part. A similar problem arose with respect to the representation upon the governing board of the union of a government which for the time being does not have a diplomatic representative in Washington. It was decided that a republic thus situated might intrust its representation on the governing board to some other member of that body, who would then have a vote for each country represented. The suggestion had been brought forward that an American republic whose diplomatic relations with the United States had been interrupted, should be entitled to accredit a special representative directly to the governing board of the Pan-American union. When the practical difficulties involved in such an arrangement were pointed out, especially the inadmissibility of erecting within a sovereign state a separate organization empowered to receive quasi-diplomatic envoys,¹ the suggestion was withdrawn, and the solution above outlined was unanimously adopted.

An interesting question in the public law of international unions is that concerning the effect of the admission to a conference of delegates of a government, the independence or legality of which has not been recognized by all the members of the union. Precedents have been established which appear to justify the enunciation of the principle, which is also in accordance with the essential nature of international unions, that membership in a union and participation in its administrative and deliberative business does not involve the recognition by every participant state of the legality or independence of every other government represented. The delegates of the republic of Brazil attended the first Pan-American conference at a time when the republican government had not as yet been officially recognized by all the American states. At the third conference both Colombia

¹ The right of legation enjoyed by the Vatican rests upon a special historic basis.

and Panama were represented, the latter republic at that time not having been recognized by the country from which it had severed itself. The delegates of Colombia did not make any declaration respecting this matter while the conference was in session, yet no one considered their participation as implying a recognition of the new republic. Similarly, at the fourth conference the presence of the delegate from Nicaragua, who represented the government of Señor Madriz, which was not recognized by the United States, was not a fact involving such a recognition. It is evident that as the conference from its very nature cannot enter into the controversies between individual nations nor those within the different countries, its acceptance of the representatives of a *de facto* government cannot be said to carry with it a universal recognition. It is indeed conceivable, though fortunately such a case has not as yet arisen, that the conference may have to decide for itself whether to recognize, for its own purposes, a certain government desiring to be represented. This question would arise, should two delegations from one country demand admission, or should the delegation appearing from any country notoriously not represent a *de facto* government. It is, however, very likely that in such a case the decision would rest upon the principle that as the conference cannot go into the internal affairs of a country, it cannot admit any delegation at all under such circumstances, unless indeed in the former of the two cases one of the two delegations had appeared under practically fraudulent pretenses. The full enjoyment of the rights of membership in the union may therefore be said to be based upon the maintenance of a stable and undivided government.

A further step was taken to secure the periodicity of future conferences by bestowing upon the governing board of the Pan-American union the power to designate the place and time of the next conference, and by fixing the period within which it is to be convoked at five years. This time may however be extended, should a meeting within the designated period become impossible. The rivalry which always exists among various nations who wish to secure the privilege of inviting the conference is in itself a proof of its importance. In order to avoid lengthy discussions and unavoidable disappointments during the conference, it has been found convenient to allow the governing board to make the selection, with due regard to all the points of convenience and propriety involved.

The conference by resolution recommended the establishment, in the city of Buenos Aires, of a permanent Pan-American exposition of products. In order to carry out this resolution it was provided that, corresponding to the governing board of the Pan-American union, the American diplomatic representatives accredited to the Argentine government should form a committee in Buenos Aires, intrusted with the administrative direction of the permanent exhibit.

The organization of the Pan-American Union itself was a subject for detailed and careful consideration in committee, as the result of which a resolution and the tentative draft of a treaty were adopted by the conference. The committee considered the advisability of converting into a formal convention the resolution passed and continued by successive conferences under which the bureau of American republics had hitherto been maintained. On the part of many delegates the belief was expressed that the ratification of such a convention would take an indefinite time on account of the constitutional provisions in numerous republics which require the submission of treaties to one or both houses of the legislature. Accordingly it was feared that the activities of the bureau might be embarrassed were a convention adopted immediately, on account of the delays which might occur in its ratification. It was therefore decided to maintain for the immediate future the resolution under which the bureau exists, making therein such changes as might seem necessary; and also to submit to the governments the draft of a convention carefully considered, which can be ratified as soon as the governments may find it convenient.

The conference maintained the presidency of the Secretary of State of the United States of America in the governing board of the Pan-American union. Indications had been made by the delegates of some countries that it would be more in accordance with the equal dignity of all the members in the union if the chairmanship of the board were made elective. But it was pointed out that by common international practice a position of similar importance is usually accorded the minister of foreign affairs of the country in which the union has its seat; and also that the presidency of the Secretary of State would powerfully assist the union and help to increase its dignity and efficiency. The importance of these considerations was accepted by all, and the dignity of the presidential office was again

conferred upon the Secretary of State of the United States as an honor freely bestowed by the American nations. In the absence of the Secretary of State the sessions of the governing board are to be presided over by one of the American diplomatic representatives present, in the order of rank and seniority and with the title of vice-president. In order to acknowledge the dignity which it is proper to recognize in an international institution of such importance, the name of the bureau was changed to "Pan-American Union"; while the name of the organization of American countries which supports the bureau was changed to the briefer form of "Union of American Republics."

Under a resolution passed at Rio de Janeiro in 1906, Pan-American commissions have been established in nearly all of the republics. It was the original intention that these bodies should coöperate with the central union in carrying out its work. In accordance with this purpose and in order to make it more definite, the fourth conference embodied in the resolution and draft convention relating to the Pan-American union an article defining the functions and relations of the Pan-American commissions. Being linked to the Pan-American union, they are to form with it a common organism, acting as its representatives and agencies in the different states, and having on their part the right to bring to the central institution matters relating to their respective countries.

The functions of the Pan-American union were not essentially modified. It was decided that it would be desirable for the union to gather and publish information on the current legislative acts of the American republics. The position of the union as the permanent commission or agent of the international American conferences was emphasized. The success of these conferences in the future will depend largely upon the thorough and systematic work of preparation carried on by the Pan-American union and the commissions. The questions considered by the conferences are becoming less general and elementary, far more detailed and technical. The extensive body of accurate information required in the making of treaties and resolutions which shall be of practical value can be furnished only by coöperative work carried on through the administrative agencies of the union. The financial administration was more definitely regulated with respect to the annual budget and the duty of the member states to pay their quota upon a fixed date into the treasury of the

Pan-American union. It was left to the governing board to arrange for the fulfillment of the duties of a treasurer on the part of some official of the union, and to establish an independent system of audit. The importance of the Columbus Memorial Library as a center where the most complete information on all the countries of the union can be obtained, was recognized, and the republics renewed their engagements to supply this collection with documents and other books. In order to make the work of the Pan-American commissions more successful, and to form in each country a center of information on all American affairs, it was provided that documents and books should similarly be sent to the Pan-American commission in each country. It was felt that it would not be wise to attempt to make specific regulations for all the activities of the Pan-American union. The power to provide in this manner for the control of the administration in all its agencies was therefore left to the governing board, and, in matters referring to the internal administration, to the director general. The Pan-American union thus established is an organization of great importance and dignity. It was therefore thought proper that the title of the head official should be changed to "director general" and that of the secretary to "assistant director."

In preparing and adopting the draft of a convention concerning the Pan-American union, the committee and conference were governed by the principle that in such a convention there should be laid down only the essential bases of the organization and functions of the union, leaving to the governing board and to the director general the power to determine, by means of regulations, all the details involved in the proper performance of the mission of this important agency. The draft adopted rests entirely upon experience, and incorporates in a more formal manner the organization already developed by means of the successive resolutions of the conferences and the activities of the union.

The program of the conference included the consideration of the renewal of the treaty concerning the arbitration of pecuniary claims. The treaty concluded in Mexico upon this subject, and renewed at the conference at Rio in 1906, had been ratified by twelve American states. The convention adopted by the fourth conference retains the first article of the treaty of Mexico, which provides for the submission to arbitration of all pecuniary claims which cannot be adjusted

amicably through diplomacy in all cases where such claims are sufficiently large to warrant the expense of arbitration. To this article there was added the clause that "the decision shall be given in conformity to the principles of international law." The treaty allows the alternative of submitting the respective claims to the permanent court of arbitration at The Hague or of constituting a special jurisdiction. While the former treaties were concluded for a period of six years, the time during which the present convention is to run is indefinite, the signatory nations being given the faculty of denouncing the convention upon giving notice two years in advance.

The discussion, in committee, of the treaty on pecuniary claims was very interesting from the juristic point of view. The proposal was made to include in the treaty a provision giving the arbitral tribunal the power to decide the preliminary question whether the respective claim is one in which diplomatic procedure is appropriate. The suggestion was made in order to protect the sovereignty of a nation against any attempt to take from its courts cases which they are legally competent to try, and to carry them before an international judicature. While the article in question was not added to the treaty, the committee in its report cited an extract taken from the report of the committee at the Rio conference to the effect that "the internal sovereignty of a state consists explicitly in the right it always preserves of regulating, by its laws, such juridical acts as are consummated within its territory, and of trying these by its tribunals, excepting in cases where, for special reasons, they are converted into questions of an international character." The committee then disavowed the purpose of withdrawing alien residents from the jurisdiction of the local court, and stated that arbitration would exist only "in cases where it is shown that there has been a violation of the rules of conduct imposed upon states under the sanction of international law, towards the citizens of other nationalities. . . . With this understanding, the expression 'denial of justice' should be given a most liberal construction, causing it to embrace all cases where a state fails to furnish the guarantees which it ought to secure to all individual rights. The failure of guarantees does not come solely from the judicial acts of a state. It may result also from the acts or omissions of other public officials." In the course of the discussion Mr. John Bassett Moore, delegate of the United States, made the following declaration, which was also

incorporated in the report of the committee, and which indicates clearly the points involved :

The undersigned, while he refrains from entering into a discussion of the statements of general principles embodied in the foregoing report, deems it proper to observe that he does not consider it to be practicable to lay down in advance precise and unyielding formulas by which the question of a denial of justice may in every instance be determined. Still less does he believe it to be possible to treat this matter as a preliminary question, which may be decided apart from the merits of the case, or to include in a general treaty of arbitration a clause to that effect. In the multitude of cases that have, during the past hundred and twenty years, been disposed of by international arbitration, the question of a denial of justice has arisen in many and in various forms that could not have been foreseen ; nor can human intelligence forecast the forms in which it may arise hereafter. In the future, as in the past, this question will be disposed of by the amicable methods of diplomacy and arbitration, and in a spirit of mutual respect and conciliation which happily grows stronger among nations with the lapse of years.

This declaration was embodied in the committee's report because the other members did not consider it to be in conflict with what had been set forth.

A group of three treaties adopted by the fourth conference deals with the important subjects of copyrights, patents of inventions, and trade-marks. In all these matters the conference was informed and inspired by the recent advances in the development of international administrative law, achieved through the general international union, which deals with industrial and literary property. The treaty of Bern, as recently amended by the convention of Berlin, formed the basis of the convention on literary and artistic property. The essence of this convention is contained in Article 3, which provides that "the recognition of a right of literary property obtained in one state, in conformity with its laws, shall be of full effect in all the others, without the necessity of fulfilling any further formality, whenever there appears in the work some statement indicating the reservation of the property right." The principle here adopted constitutes the highest and most effective form that can be given to literary property. In fact, it likens that right almost completely to that of property in physical objects, which, too, is protected in every civilized state whenever it has been legally acquired in one of them. The provision led to some debate in the conference, as certain delegates, especially some members of the Mexican delegation, considered that any formalities required by a state where protection is sought should also be observed ;

but the simpler system was ultimately adopted by the conference. Article 6 of the convention provides that the extent of the protection granted to authors or artists shall be governed by the laws of the country where it is sought, but that the term of protection shall never exceed the time accorded by the laws of the country in which the respective property right originated. This article embodies the solution adopted by the most recent and mature opinion of jurists the world over, and incorporated in the convention of Berlin. The result of the provision is that each country gives to the literary property originating in other treaty states the same protection which it accords to its own citizens, but that, on the other hand, no country can claim for its citizens a longer term of protection than is granted by its own legislation.

In the treaty on patents of invention the recent thought and experience of the entire world were also taken into account. The essence of the convention is contained in Article 2, which provides that "every citizen of each of the signatory states shall enjoy in each of the other states all the advantages conceded by their respective laws relative to patents and inventions, designs, and industrial models. In consequence they shall have the same protection and legal remedies against every attack upon their rights, being bound, however, to comply with the formalities and conditions imposed by the internal legislation of each state." It is further agreed that every person who has duly applied for a patent in one of the contracting states shall be protected in his right of property during a term of twelve months, in order that he may have time to secure recognition of his patent in the other states. Another article provides that the recognition of a patent may be refused because the process or model involved does not really constitute a new invention, but has been in use previously. This provision is important, as it will oblige states, in order to receive international protection for the patents granted by them, to inquire into the usefulness and novelty of the inventions for which a property right is sought. The absence of a provision of this kind from the convention adopted by the conference of Rio de Janeiro was one of the causes why the government of the United States decided not to ratify that agreement.

A detailed and interesting convention was adopted concerning trade-marks. Full international protection is to be accorded to

trade-marks duly registered in one of the countries of the union, without prejudice to the rights of third persons or to the provisions of the internal legislation of each state. For the purpose of carrying out this system an international registry of trade-marks is to be established, with two bureaus, one located in Havana for the accommodation of the northern countries, the other in Rio de Janeiro for those to the south of Colombia. In order to secure the benefit of international protection, the owner of a trade-mark may register it in the proper bureau upon payment of the sum of fifty dollars. In the conventions adopted at Rio de Janeiro it was contemplated that the international bureaus of Havana and of Rio de Janeiro should not only undertake the registry of trade-marks, but should also be the depositories of international patents and copyrights. Upon more careful consideration it has however seemed unduly cumbersome and expensive to require the transmission of the records of all patents and copyrights granted in the individual states. The treaty framed at Buenos Aires therefore confined the function of registry entirely to trade-marks, while it charged the bureaus to act also as general information offices in relation to intellectual and industrial property. The reasoning of this decision accords with the experience of the international union which has its seat at Bern. As is well known, the bureau at Bern acts as a registry only for trade-marks; in matters of patents and copyrights it is primarily an information office. The status which international legislation has been attempting to secure for the latter two kinds of property is that each state should give to the citizens of other states the rights and the protection which it accords to its own citizens. An international registry of patents and copyrights has not as yet been created anywhere. It is, however, the purpose of international agreements to render more and more effective and uniform the protection which the different states accord to these rights. In this matter many of the American republics have made but a mere beginning, and it is highly desirable, from the point of view of the development of intellectual and industrial life, that there should be created in those states which do not as yet have an efficient legislation a strong sentiment for protecting these important kinds of property.

A matter of great interest in international administration was dealt with in the resolutions concerning the unification of consular

documents and customs regulations. The instructions issued by the Department of State to the United States delegation dwelt upon the hindrances of trade which result from the lack of uniformity in such matters as consular fees, the forms of invoices and manifests, and other features of consular and customs administration. It suggested the adoption of a uniform invoice for all shipments from one republic to another, and a uniform method of consular certification. The recommendations embodied in the resolution include the following: to suppress the consular certification of the general manifest; to dispense with the certification of the bill of lading in the case of countries requiring the certified consular invoice, for the reason that the latter document embraces all material data; and to adopt a common form of consular invoice and of consular manifest, models of which were appended to the resolution. The study of the different forms of certificates in use convinced the committee and the conference that "the essential requirements of all these documents could be combined into a single international form of consular invoice, if there were omitted the certificates of shippers and consuls which must reflect the requirements of local laws."¹ With respect to consular fees the resolution recommended that they should be moderate and should not be treated as an indirect means of increasing the customs revenue; it is considered desirable that these fees should be limited so as not to exceed an amount necessary to cover the costs of the consular service.

The resolution regarding customs regulations is in the main a restatement of the resolutions adopted by the New York international customs congress of 1902, which had never been placed before the several countries in a formal way. These resolutions contain a number of suggestions for making the formalities of customs administration simple, and freeing them from elements which would unduly retard the activities of commerce in the shipping industry.

The resolution adopted on the subject matter of sanitary police recommends the adoption, by the countries which have not yet ratified it, of the international sanitary convention of Washington, as well as the enforcement of the resolutions of the third and fourth sanitary conferences, held respectively at the city of Mexico and at San José in Costa Rica. Article 12 of the convention of Washington is to be interpreted as requiring that the official proof of freedom from

¹ From the report of the delegation of the United States to the Department of State.

infectious disease must be "satisfactory to both parties interested." The original proposal that such official proof should be "satisfactory to the interested party" was objected to in committee by certain delegates on the ground that this phrase might endanger the commerce of the weaker country by subjecting it to the discretion of the officials in another, who might use their power in a hostile manner. The form ultimately adopted seemed to be free from the objection raised, in the opinion of all the delegations with the exception of that of Venezuela, which entered its reservations upon this point.

The other resolutions adopted by the conference deal either with matters of condolence or commemoration, or take up commercial and intellectual interests, such as the construction of the Pan-American Railway, the establishment of more efficient steamship service between the American republics, the summoning of the coffee congress, the celebration of the opening of the Panama Canal, the interchange of university professors and students, and the proceedings of the Pan-American scientific congress. All these matters are full of interest and form an important part in the development of closer relations between the republics of America, but as they do not involve any specific points in international law or practice, we shall simply mention them here without dealing with them in detail. It may however be noted that the resolution concerning steamship communication contains the very interesting suggestion that an inquiry be instituted concerning the means by which there may be established between the American republics a reciprocal liberty with respect to the coasting trade. The resolutions referred to in this paragraph indicate the growing strength of the feeling of solidarity among the American nations, which was given an eloquent expression in the speeches delivered at the opening and at the closing of the conference, as well as in the sessions when the centenaries of independence of different republics were commemorated. Among the delegations there was a complete feeling of mutual confidence, and all the questions before the committees were discussed with great frankness and in the fullest detail. Every point of view was ably presented, and differences of opinion were insisted upon with energy. It is therefore the more gratifying to record that, with all such divergencies, and after all national points of view had been discussed without reserve, it was possible to arrive at a practically unanimous agreement upon every

subject of the program. Nor were these agreements the result of superior insistence on the one part, or the ready acceptance of alien points of view on the other ; but they naturally grew and evolved out of the discussion, so that as it proceeded, certain definite conclusions came more and more clearly out of uncertainty into the steady light of rational conviction.

Turning to a general estimate of the work performed by the conference in the development of international administrative law, we encounter the fact that expectations are often entertained in relation to such diplomatic meetings which in the nature of things are not justified. It is the purpose of a general international conference to determine a basis upon which unanimous or almost unanimous action may be had. It cannot, in the space of a few weeks, solve all political questions of an international nature ; far less can it reform the world by entering into and attempting to deal with the domestic problems of different nations. The fourth Pan-American conference did not escape the unfavorable criticism born of such unpracticable views, but it must also be said that the responsible press of South America, when it came to consider the results of the conference, showed a high degree of appreciation of the exact nature of the work which these great international meetings can perform. The conference itself waived all purely doctrinaire discussions and dedicated itself from the start to the practical solution of specific problems. It was not indeed unmindful of the great principles which underlie the solidarity of America. Eloquent expression was given to these, from old and new points of view, but it was the unmistakable feeling among the delegates assembled that the relations of the American republics to each other were well enough settled as regards their general character to enable the continental conference to pass on to the order of the day and to transact the specific business before it. Isolated speeches involving a different conception were quietly listened to and respectfully consigned to the printed minutes of the conference. The practical character of the work to be done was emphasized through the reports made by the different governments, which indicated that since the last conference, far more ratifications of Pan-American treaties had been made than ever before.

From this brief review of the work of these conferences we turn to consider the question whether these meetings, called into being

by the optimistic policy of Blaine, have, at least in a measure, come up to the hopes entertained by the first advocates of the Pan-American idea. The result thus far achieved, expressed in the form of actual laws and treaties, is not indeed a large one. Yet the conventions and resolutions passed by the conference have been given constantly more support and attention by the governments, and there is undoubtedly a growing sense that the conferences and the international union are by no means destined to failure, but are called to play a prominent part in the development of an all-American civilization. The very existence of an association of this kind in which the representatives of states of varied interests are given an opportunity of exchanging views, of measuring each other, and of testing the extent of the sphere of common consent is itself a great advantage, even if few treaties should result. The whole matter of international administration is in its infancy, and the germs which exist at the present time are all-important as indicating the tendency of future developments. The facts that the American international union embraces so many subjects and that it has an organ in the Pan-American Union of Washington, which is now given the opportunity of making itself truly efficient, are matters of great importance for the future peace and welfare of the American continent and of the world at large. As the understanding between the American nations grows stronger, as they realize more completely their true community of interest, these international services will grow in importance and will become a strong bond of civilization.

It will be seen from this that the union of American republics is not looked upon as simply another name for a general protectorate of the United States over all America. Even were such a thing possible, the government of the United States has no intention of assuming such a burden. Certainly at the conferences the American government has had no policy to force upon the sister republics. Its delegates always accord an impartial hearing to whatever may be proposed by other delegations; they claim no hegemony for the United States, but strive to assist in arriving at a basis for common understanding. It is of course in the nature of things that the government of a nation so great and powerful as is the United States should exert a considerable influence in any council that it may enter, but there was absolutely no inclination to strive for an influence greater than would

be freely accorded by the other governments as a natural result of the situation. The union of American republics is therefore truly international, its action is based upon the unanimous consent of all the states composing it, and no power or group of powers claims for itself a determining influence.

The organization of the Pan-American Union, as perfected by the resolution and the draft convention at Buenos Aires in 1910, contains the following salient features. The Pan-American Union in Washington has the following duties and purposes: (1) to compile and distribute data and information relative to commerce, industry, agriculture, education, and general progress in the American countries; (2) to collect and classify all information respecting treaties and conventions between the American republics and between these and other states, as well as concerning the legislation in force in them; (3) to contribute to the development of commerce and intellectual relations between the American republics, and to their more intimate mutual knowledge; (4) to act as a permanent commission of the international American conferences, to keep their archives, to assist in obtaining the ratification of the resolutions and conventions adopted, to study or initiate projects to be included in the program of the conferences, to communicate them to the different governments of the union, and to formulate the program and regulations of each successive conference; (5) to present to the various governments, before the meeting of each conference, a report upon the work accomplished by the institution since the close of the last conference, as well as separate reports concerning the matters referred to the union. It is also provided that there shall be created in the capital of each one of the republics a Pan-American commission, dependent upon the ministry of foreign affairs and composed, as far as possible, of former delegates to an international American conference. It shall be their function (*a*) to assist in securing the approbation and ratification of resolutions and conventions adopted by the conference; (*b*) to furnish to the Pan-American Union all the data which it may require in the preparation of its works; (*c*) to present, by their own initiative, projects which they may judge appropriate to the purposes of the union.

The management of the Pan-American Union is intrusted to a governing board, composed of the diplomatic representatives accredited

by other American governments in Washington, and of the American Secretary of State, upon whom the presidency of the governing board has been conferred. The governing board holds regular monthly sessions, except during the summer months. Five members form a quorum.

The administration of the Pan-American Union is delegated to a director general, who formulates, with the approbation of the governing board, the regulations for the various services of the union. The general regulations are passed by the governing board in accordance with the resolutions of the Pan-American conferences. The director general presents at the ordinary session of November an itemized budget of the expenses for the following year. This budget, when adopted by the governing board, is communicated to the signatory governments with an indication of the annual quota due from each, which is fixed in proportion to the population census. The quotas are to be paid promptly into the treasury of the Pan-American union. An auditing committee, composed of members of the board, is also established. According to the resolution the union is established for successive periods of ten years. The convention would make it of indefinite or permanent duration. Any government, however, has the right to withdraw upon giving two years' notice to the Secretary of State of the United States.

THE CENTRAL AMERICAN UNION¹

Efforts had been made from time to time to bring about more stable and amicable relations between the five Central American republics. When finally, in 1906, a treaty was signed on board the United States vessel *Marblehead*, then in Central American waters, it provided for a conference to be held in Costa Rica for the purpose of drawing up a general treaty of peace, friendship, and commerce. This preliminary treaty was signed by representatives of Guatemala, Salvador, and Honduras. A diplomatic conference, held at San José, Costa Rica, in September, 1906, was attended by representatives of the Central American states, with the exception of

¹ Treaties, *Am. Jour. of Internat. Law*, supplement for April, 1908. Scott, J. B., Central American Peace Conference, *ibid.*, Vol. II, p. 121. Anderson, Luis, *ibid.*, Vol. II, p. 144. Segunda conferencia centro-americana, actas-convenciones, San Salvador, 1910.

Nicaragua. A general treaty of arbitration was signed at this time, and other conventions for the promotion of closer intercourse were concluded. The absence of Nicaragua from the conference of San José and the continued unrest resulting in frequent disturbances led to the friendly mediation of the United States and Mexico. A general peace conference was called to meet at Washington on September 17, 1907. The work of this conference was productive of a number of important international enactments regulating the mutual intercourse and the commercial and political relations of the Central American republics. The past union of these republics, their contiguousness, and the similarity of their natural conditions led to a desire to create an international union which would do more than could ordinarily be undertaken by such an organization. As one of the conventions expressed it, the following Central American interests, among others, should be given special attention: the peaceful reorganization of the mother country, — Central America; public education of an essentially Central American character; commerce between the republics; improvement in the methods of agriculture and the industries; uniformity in civil, commercial, and criminal legislation; uniformity in customs laws, in the monetary system, and in weights and measures; and coöperative effort for better sanitation. Another of the conventions speaks of the Central American court of justice as representing the national consciousness of Central America. It is therefore apparent that the conventions aimed at a form of coöperation which would in some respects constitute a first step in the direction of federal government. Yet as the sovereignty of the individual republics has been fully maintained, the Central American union has thus far not passed beyond the stage of purely international action.

The general treaty of peace and amity concluded at Washington provides for the mutual protection of the rights of citizenship, admission to the practice of learned professions, enjoyment of the right to artistic and industrial property, the treatment as national vessels of the ships of any of the contracting countries, mutual validation of public instruments and judicial acts; in a word, it establishes between the five republics a complete régime of mutuality in matters of private international law, and of public law as far as the rights and privileges of individuals are concerned.

The convention for the establishment of a Central American court of justice is an instrument of great interest. The jurisdiction of the court comprises cases between contracting governments, as well as claims of individual citizens of a Central American country against any of the other contracting governments because of the violation of treaties and conventions, and other controversies of an international character. It is not necessary that the government of the suitor should support his claim, provided that the remedies of law have been exhausted or that a denial of justice can be shown. The Central American court of justice is therefore distinguished through the fact that, preceding the international prize court created by the Hague conference of 1907, it constitutes the first instance of an international tribunal which is authorized to apply its remedies at the suit of individuals. The court consists of five justices, one being appointed by each republic ; its procedure and the rights of representation before it are fully defined by the convention. It is provided that every decree or judgment shall be rendered with the concurrence of at least three of the justices.

Another convention concluded at the same time provides for the establishment of an international Central American bureau for the purpose of furthering the objects for which the Central American union is created. The bureau was established in the city of Guatemala in 1908. It publishes an official journal, *Centro América*. The establishment of a Central American pedagogical institute, to be located in the republic of Costa Rica, was also agreed upon.

International conferences of the Central American union are held annually in January in the different republics in rotation. The first conference was held at Tegucigalpa in 1909, and the second at San Salvador in 1910. At this latter, conventions for the following purposes were adopted : the unification of the consular service of the five republics ; monetary uniformity on a gold basis ; commercial reciprocity among the five republics ; the adoption of the metric system of weights and measures ; the relations of the Central American bureau to the governments ; and the establishment of the pedagogic institute provided for in the Washington treaty. These conventions are adopted *ad referendum*, subject to ratification by the respective governments.

NOTE TO CHAPTER III

Diagram indicating the ratifications of the conventions adopted by the conference of Rio de Janeiro and the establishment of Pan-American commissions (up to June, 1910).

Countries	Naturalized citizens resuming residence in country of origin	Pecuniary claims	Patents Trade-marks Copyrights	Codification of international law	Pan-American commission
United States of America .	×	×		×	×
Argentina . .	×	×	×	×	×
Brazil	×	×	×	×	
Chile	×	×	×	×	×
Colombia . .	×	×		×	×
Costa Rica . .	×	×	×	×	
Cuba		×			×
Dominican Republic . .				×	×
Ecuador . .	×	×	×	×	
Guatemala . .	×	×	×	×	
Haiti					
Honduras . .	×	×	×	×	×
Mexico . . .	×	×		×	×
Nicaragua . .	×	×	×		×
Panama . . .	×	×	×	×	
Paraguay . .					
Peru	×	×		×	×
San Salvador .	×	×	×	×	×
Uruguay . . .				×	
Venezuela . .				×	

× Ratified.

× × Ratification advised by executive, being considered by Congress.

CHAPTER IV

THE ADMINISTRATIVE LAW OF THE HAGUE TRIBUNAL

The general international union represented by the Hague conferences has been fully dealt with in so many recent books that it would be of little use to go over the ground again in this place. It is therefore not our purpose to set forth their history or their work. Yet, for the sake of completeness and on account of their great importance to the subject of international unions, we shall have to devote some attention to the permanent institutions of an administrative character which have been created by the Hague conferences. In establishing and developing the administrative organization of the union, they have made use of the experience gained in the other more special unions with which we have already dealt; but they have also added some elements in their constructive work which will, in turn, exert an influence upon the development of general international institutions.

The international peace conference of The Hague, though originally resulting from the call of an individual government, has already become an institution which is to a certain extent self-existent. The exclusive faculty of calling the conference and undertaking the preparatory negotiations, which was claimed for Russia on account of her original initiative, does now no longer obtain; for while the attempt to establish a regular periodicity in the meetings did not fully succeed, the assembling of a third peace conference, "held within a period corresponding to that which has elapsed since the preceding conference," has been agreed upon. The recommendations of the second conference also call attention to "the necessity of preparing the program a sufficient time in advance to insure that the deliberations may be conducted with the necessary authority and expedition. In order to obtain this object, the conference considers that it would be very desirable that, some two years before the probable date of the meeting, a preparatory committee should be charged by the governments with the task of collecting the various proposals to be submitted

to the conference, of ascertaining what subjects are ripe for embodiment in an international regulation, and of preparing a program, which the governments should decide upon in sufficient time to enable it to be carefully examined by the countries interested. This committee should further be intrusted with the task of proposing a system of organization and procedure for the conference itself." Thus gradually, as the experience of nations in this matter ripens through repeated meetings and continued common action, a normal method of procedure is being worked out.

The administrative organization of the Hague tribunal and of its bureau is provided for in the general convention on the settlement of international disputes of 1907. This treaty is so important a landmark in the development of international action reduced to institutional form that its text should be carefully considered by those interested in this subject. Being readily enough accessible, it should be immediately at hand in the study of international administration for purposes of direct examination and comparison with other institutions. Though its text will, in the course of things, be modified and in part superseded by subsequent legislation, it will always be a document of the greatest importance, as containing the establishment of permanent international institutions whose operations are universal.¹

The second conference paid especial attention to the development of international procedure. The experience gained through the inquiry into the Doggerbank incident was utilized to give completeness and definiteness to the provisions relating to the commissions of inquiry. The procedure of these important though temporary international bodies is laid down with great clearness and in considerable detail. The manner of composing the commissions, the representation of parties in investigations before them, the power to obtain testimony, the duty of litigants to furnish information, the manner of examining witnesses and of presenting the case, — all these matters are fully regulated in the twenty-eight short articles of Part III of the

¹ The text may be found in the volume of "Texts of the Peace Conferences at The Hague, 1899 and 1907," by James Brown Scott (p. 155); also in "The First Book of World Law," by Raymond L. Bridgman; and in "The Second International Peace Conference," *Sen. Doc. 444*, Sixtieth Congress, First session. On the general subject see also Ralston, J. H., "International Arbitral Law and Procedure," Ginn and Company, Boston, 1910.

treaty. In a similar manner, though with different details, the organization of the permanent court and its procedure are settled in the subsequent parts of the convention.

The more specifically administrative organs of the union are the permanent administrative council, composed of the diplomatic representatives of the contracting powers accredited to the Dutch government, and of the Dutch minister of foreign affairs, who acts as president. This institution is evidently modeled upon the governing board of the Pan-American union. The council has power to control the administrative side of the work of the tribunal and of the international bureau ; it appoints and dismisses officials and employees of the latter, fixes their salaries, and controls the expenditure. The council also takes charge of the preparation of an annual report upon the work of the international court and of the administrative bureau, as well as on the budget of disbursements. It makes its decisions by a majority vote.

It is the function of the bureau to perform all the administrative services needed in the operations of the court. It acts as a means of communication between parties and the arbitrators. It makes the necessary arrangements for the meetings of the court and acts as a chancellery or secretariat in all matters of judicial action. The expenses of the bureau are borne by the contracting powers in the proportion fixed respecting the international bureau of the universal postal union.

Another convention concluded by the conference of 1907 deals with the establishment of an international prize court. In this document, too, matters of procedure are dealt with in detail. The greatest departure from the usage of international tribunals is made in that the prize court will take action in certain cases at the suit of an individual. Individual subjects of a neutral or hostile power, if the judgment of a national court in a prize case adversely affects their property, may institute proceedings before the international court. The administrative council and the international bureau fulfill the same functions with respect to the prize court as have already been explained above respecting the court of arbitration. The secretary general of the international bureau acts as registrar of the court ; the bureau is in charge of the archives and carries on the administrative work in general. Notice of appeal is entered with the bureau, to whom the records of

the case in the national court must be transmitted. The president of the court and the registrar authenticate the minutes of the proceedings by their signatures.

In the fall of 1909 the American Department of State proposed to the other powers who are signatories of the Hague conventions that the international prize court should be invested with the duties and functions of the proposed court of arbitral justice, the standing tribunal which was recommended but not established by the second conference. The American government suggested that "the international court of prize shall be competent to entertain and decide any case of arbitration presented to it by a signatory to the international court of prize convention ; and when sitting as a court of arbitral justice it shall conduct its proceedings in accordance with the draft convention for the establishment of a court of arbitral justice, approved and recommended by the second Hague conference in October, 1907."

CHAPTER V

INTERNATIONAL ADMINISTRATIVE LAW AND NATIONAL SOVEREIGNTY¹

The conception of a law common to the entire civilized world has received a new content and a practical interpretation through the recent development of international unions. The numerous private unions and associations for international purposes constitute a spontaneous grouping of men throughout the world, who are interested in certain lines of enterprise — industrial, political, or scientific — which are not limited by national boundaries, but have the whole world for their field of action. The number of such associations already created is indeed surprising. Nearly every type of social effort for the promotion of the broader interests of mankind has been organized in this manner, so that there are literally hundreds² of international unions and associations. These bodies hold periodic conferences for the interchange of opinions and the comparison of results, and in many cases they have established permanent bureaus or offices.

The *public unions* which have been formed by the action of states, and which are now operating as public agencies of international interests, indicate the extent to which the national authorities have come to realize the importance of interests and activities that transcend in their operations the boundaries of the national state. There are over thirty such unions, most of them endowed with permanent organs of administration, which enable them to fulfill, even though only in a rudimentary way, the three classic functions of government, — the legislative, executive, and judicial. The interests which they represent and administer can be understood only when we consider the human world as a totality of interrelated forces and activities. From this point of view any other form of organization that might be given them would be defective in extent and efficiency.

¹ Reprinted, with changes, from the *American Journal of International Law*, January, 1909.

² The number of international congresses held in the years 1901–1910 was seven hundred ninety. See lists in the *Annuaire de la vie internationale*, 1910.

THE BASIS AND BODY OF UNIVERSAL LAW

When any social or economic interest has attained world-wide relations, when its activities in order to succeed must rest on the experience of all mankind, and must extend their operations over numerous national territories, then such an interest can be effectively regulated only upon a world-wide basis. The legal aspects of its organization and action can be expressed only in the terms of a law enacted from the point of view of international relations, rather than resting upon the experience and policy of any national state. The world law which is thus created is not merely an intellectual product such as the natural law of the older jurisprudence. Quite the contrary, it is the legal expression of positive interests and activities already developed in the life of the world that are manifesting themselves in action, and are therefore entitled to have their relations expressed also in juristic form. A law of this kind, while aiming at universality, will strive to avoid purely theoretical construction and to base itself upon ascertained needs and actual experience.

When the principal interests that have already received an international organization are passed in review, it is not difficult to recognize in them those characteristics which make them essentially international. It is an often-repeated saying that the world at the present time stands in the sign of communication. The ideal of the civilized world with respect to economic relations is that the entire surface of the globe should be rendered readily accessible to the enterprise of any individual, and that rapid and uninterrupted communication should make possible a uniform management and control of the natural resources which humanity has inherited. The demands thus made upon international policies have their material support in the great advances recently achieved in the practical sciences and arts of communication. But in order that the greatest advantage may be gained by mankind from these inventions, a liberal character should be imparted to legislation. We need a uniform law of transportation by land and sea in order that the efficiency of communication may not be impaired by unnecessary local differences of regulation. Scientific jurisprudence has directed itself to the task of gradually unifying the principles of maritime law and restoring to it the character of a world law, so that it may again be universal, as it was in its original

medieval form. The European railway freight union has created a code of transportation which is justly considered one of the most notable achievements of modern international activity in the field of legislation. The very nature of communication makes it an international interest and establishes the unavoidable necessity of legislating in this matter from the point of view of universalism, — regarding the world as a unified economic organization.

The same principles apply to correspondence by letter and by telegram. Rapidity of intelligence and notification is essential to efficiency in the exploitation and control of the manifold natural resources of the earth, and to the success of its greater industrial and commercial enterprises. The impossibility of treating any of these interests from the point of view of a national policy alone was illustrated in a most striking fashion in the case of radiotelegraphy. When this process had gained recognition as a practical method, the British Marconi Company secured an exclusive contract with the British Lloyd and with the Italian government for telegraphic service between vessels and the coast. Under this arrangement the wireless stations in these two countries would refuse to receive or send messages of any other system than that of Marconi. The political advantages of such an arrangement to a power like Great Britain are apparent at first sight, and the relinquishment of such a privilege through any convention met with much resistance in England, because it was believed that, under the Marconi monopoly, the British government would have obtained a great advantage over its rivals. As the *Times* put it, "The existence of a world-wide commercial organization with its headquarters in England, in closest touch with the admiralty, largely operated, even in foreign territories and on foreign ships, by English operators, would be an invaluable asset to the admiralty in a great war." This was apparently exactly the way in which the other powers also saw the matter, and they opposed this attempt to establish a universal monopoly in so important an interest. The two powers which favored restriction could not resist the logic of the opposition, so that finally, in 1906, an agreement was made which guaranteed for the future the freedom of international wireless communication.

Other interests which have been organized on an international basis, while not so clearly world-wide in their nature, nevertheless contain prominent elements which have led to insistent demands for

a universal organization. The scientific and economic interests connected with labor have long been organized on such a basis, and the problems of labor legislation can be dealt with satisfactorily only from an international point of view. There are several elements in the labor situation of the world which render this policy necessary. In order adequately to protect its own labor forces, any nation would be obliged to enact legislation which might seriously handicap its national industries unless assurance were given that foreign competitors should be bound by the same obligations. Efficient protection of national labor is therefore scarcely possible through the isolated efforts of an individual state; it must rest upon a basis of international understanding. Moreover, labor itself is an international force. Scarcely any nation at the present time derives from its own population all the labor of which it is in need, as more or less permanent migrations of laborers from country to country are continually taking place. The supply of labor is therefore international in scope and calls for international control.

Of all the prime economic operations, agriculture appears at first sight to be to the greatest extent local and national. Yet a less superficial consideration of the interests involved will show that agriculture is by no means an activity that can be fully protected upon a national basis. International protection is demanded against the importation of plant and animal diseases. In order that agricultural operations may be effectively adjusted to atmospheric and climatic conditions, the meteorological service ought to be organized upon an international basis. To determine accurately the status of the market for agricultural products, world-wide determinations of the conditions of supply and demand are necessary; and agricultural labor, in fully as great a measure as that employed in the industries, is dominated by international conditions and population movements.

In scientific and administrative processes it is the common experience of the entire world which is required to obtain the most satisfactory results, but it is especially in the field of criminal and sanitary administration that a large measure of international coöperation is necessary in order that national property and population may be protected. Modern criminal administration looks upon punishment as among the lesser of its various tasks, and concentrates its efforts upon the means of preventing crime. Hence extradition by no means exhausts all the

requirements of mutual helpfulness. Crime is organized internationally; the prevention of crime must therefore be effected in a similar way. We need only think of the most fundamental crime against state existence, the plottings of revolutionary anarchism, to realize fully how important international coöperation will be to the future efficiency of the protective service. We might thus review all the interests of civilized humanity, intellectual or material, and we should doubtless find in each of them certain elements calling for international action and organization. It is only when full advantage is drawn from the possibilities of international coöperation that human activities shall in the future be able to unfold and grow to their proper importance.

The body of law which is thus being created by the action of the authoritative organs of public international unions, and by coöperation among governments, is distinguished from general international law in that it not merely regulates the relations between national states, but undertakes to establish positive norms for universal action. We may tentatively apply to it the designation of international administrative law, defining it as *that body of laws and ordinances created by the action of international conferences or commissions which regulates the relations and activities of national and international agencies with respect to those material and intellectual interests which have received an authoritative universal organisation*. The law thus created contains principles and rules that might be viewed as the beginning of a universal civil law. This is true especially with respect to rules created in the matter of communication, such as the principle that telegrams and letters *must* be transmitted; but even these principles refer to administrative action, so that they may be embraced in the designation which we have used above. Should the efforts to unify the maritime law of the world be crowned with success, the body of law thus created would not properly be included under the above designation; it would continue to be dealt with under its traditional name as a branch of the universal law of communication. In its elaboration and enforcement, however, international administrative organs would take an essential part.

The general purposes that are being achieved by the creation of an international administrative law may be looked at from three different points of view. It is desired, in the first place, that a mutuality of

advantages be secured for the citizens of all civilized states. In a portion of international legislative activity, therefore, the object is not so much to change the national law as to secure for the subjects of one state the advantages of legislative and administrative arrangements in others. The national law with respect to patents, copyrights, or the admission to liberal professions may continue to differ in the various jurisdictions. But the object aimed at by international arrangements is to secure for the foreigner the protection of the national law as it stands, placing him in the same position of right with respect to these matters as is enjoyed by the subjects of the state in question.

A second general object is the regulation of the administrative activities connected with these world-wide interests on a basis adequate to their extent and importance. Such regulation may create an entirely new law, which the various national administrations bind themselves to respect ; or it may involve the modification, to a certain extent, of national methods of procedure.

Finally, there is the ideal of uniformity or universality of law, which will be to a certain extent pursued in all these international unions. This ideal, on account of the simplicity and equity of the conception which it involves, is not merely attractive from the intellectual point of view, but, in the measure in which it is achieved in any field, it serves to free business intercourse and action from all kinds of difficulties and obstructions. It must however be noted in connection with this idea that it is far easier to introduce uniform methods within the field of pure administrative activities than to establish a similar homogeneity in principles which have become part of the civil law. International administration has the advantage of operating largely in a field that has not been occupied as yet by systematized methods and historic traditions, such as is the case in the field of private law. Private international law, dealing with conditions and characteristics based on a long national experience, has far greater obstacles to overcome in its unifying efforts than has international administrative procedure.

As the purposes thus outlined are more and more nearly achieved, great advantages are to be gained. Homogeneous development, uniformity, and simplicity are favored. Commercial and industrial intercourse is facilitated by the absence of irrational local differences in legal rules. Unfair competition is prevented by the uniformity of national regulations, which places competition the world over upon a

higher plane, and which checks the granting of entirely inequitable advantages to certain enterprises and industries. The disadvantages flowing from the lack of international coöperation may be illustrated by examples taken from the field of insurance. As the operations of life insurance have become international, its scientific and technical activities have already been given an international organization in the actuarial congress. This pursuit, however, has not yet been provided with public organs of international administration. The attitude of various national administrations illustrates the difficulties created by a lack of uniformity in regulations. Thus the German government demands that any foreign insurance company doing business in Germany shall submit its transactions in all the countries of the world to the control of the German administration. France has recently established the requirement that all insurance companies operating in that country must invest in French public securities, which pay at the present time an interest of about three per cent. These regulations are plainly due to the solicitude of national officials in behalf of subjects who may become insured in foreign companies. But consider what a burden is placed upon the business of insurance, — a burden which of course must ultimately be borne by the insured. If each government should demand an account of the entire business of a foreign insurance company for the purpose of complete control, the expense and trouble involved would become intolerable. When the governments of the older states require investments to be solely in their own low-interest-paying funds, they exclude the insured from the advantage of perfectly safe investments in new countries at nearly double the rate of interest. All these difficulties would be avoided, could there be created an international bureau for the auditing and control of insurance investments. Investigations of the business of a particular company made once for all with perfect methods, on a world-wide basis, could safely be accepted by any national administration, and all the advantages open to investors the world over could thus be enjoyed by the insured of any international company.

Whenever we are examining any body of law it is of considerable importance to know how its individual principles are enforced. With respect to international administrative law reliance must, in the main, be placed upon the enlightened sense of self-interest of the national

administrations. In so far as they realize the importance of these arrangements to themselves and to the interests intrusted to their care, will they be ready and willing to enforce the principles of international legislation without any ulterior sanction. In the present condition of the world it will perhaps for some time be impossible to strengthen the administrative organs of the international unions so as to provide them with powers of execution against national administrations. Certain means of stricter enforcement have indeed been provided. In some of the unions the individual governments are required to furnish annual reports upon their legislative and administrative action with respect to the interests in question. It is understood that if these reports show that the requirements of the union have not been fulfilled, the public opinion of the world, diplomatic pressure, and ultimately exclusion from the union will be sufficient to provide a sanction. In this matter we have to rely upon the accuracy of the reports which the various administrations are bound to furnish, but we may rest assured that generally they will be careful to have their official returns correspond to the facts. How important these reports are to international administration is illustrated by the case of such a union as that for the prevention of phylloxera. Each government is bound to report upon the occurrence of this disease in its wine-producing regions, and upon the methods that have been used for its suppression and for the protection of other parts of the country. Foreign nations should be able to rely absolutely on the accuracy of these reports and upon the good faith of the government in protecting itself as well as others by a strict fulfillment of its international obligations. When the labor-protection treaty was concluded between France and Italy in 1906, it was provided that each party must annually publish a complete report concerning its administrative action. This arrangement was criticized by French publicists on the ground that Italian inspectors would exercise a certain control over French administration, in that the convention gives to each government the right of superintending the labor police exercised by the other. And yet it is inconceivable how the enforcement of treaties of this kind may be secured without such means of international intelligence. Another method was employed by the union for the protection of submarine cables. The conference of 1886 appointed a commission on the enforcement of the treaty, which

examined the laws and practice of all the treaty states and reported as to which of them were not giving effect to the convention. In the labor conference of 1890 Germany proposed that the execution of the treaty measures should be insured by a sufficient number of functionaries, — specialists appointed for the purpose. The representatives of Austria, however, cautiously urged that the surveillance of the national administration should be reserved to each government without any interference by an outside power. This objection indicates the difficulties which have to be met in any attempt to secure good faith and complete observance in the matter of international administrative treaties.

When all is said, it is plain that the real sanction of international administrative law lies in the eventual exclusion from the union of a state which persistently neglects or refuses to fulfill its obligations. In some of the unions this sanction is amply sufficient to secure the careful observance of treaty obligations. An international union may be so necessary to the economic life of the member nations that exclusion from it would produce an industrial and commercial deadlock, an eventuality to be avoided at almost any cost.

The realization of this necessity — of the fact that economic life within the national state is dependent for its prosperity upon international coöperation and membership in international unions — serves as a balance to the ever-present desire to preserve sovereignty unimpaired and the freedom of national action unembarrassed. When at the labor conference in 1890 it was proposed by the Swiss delegates that an international bureau of labor should be established, the British representatives objected on the ground that they could not put their labor legislation at the discretion of a foreign power. The feeling thus expressed is still a very strong impediment to the progress of international legislation. It seems, however, that the world is passing from this attitude to another and more liberal view of the situation. The view which national governments have generally taken regarding international coöperation is that everything must be avoided which would constitute a derogation of the complete rights of sovereignty. However, it makes a great deal of difference how this principle of caution is applied. When all international action is regarded as endangering national power, the question which governments will ask themselves when such action is proposed, will take the following form : What is

the least measure of concession which, with a due show of international courtesy, we can make to this demand? But after the usefulness and even necessity of international coöperation have emerged into view more and more clearly, and when the governments recognize that, in order to be completely useful to their subjects and citizens, they must join in these movements, they will ask themselves, What is the largest measure of aid and coöperation which we can give in this case with safety to our national interests? In other words, the international activity is no longer looked upon as an outside hostile force, to which only the least modicum of concession ought to be made; but it is regarded as a useful and necessary coöperative enterprise in which each state should join as far as its special circumstances will permit.

Although this is not the place to examine the theory of sovereignty, it is evident that the old abstract view is no longer applicable to conditions in a world where states are becoming more and more democratic and where the organization of interests is taking on an international aspect. It is undoubtedly a mistake to look upon sovereignty as an irreducible entity including the sum of all political and social power. It is therefore not justifiable to proclaim that sovereignty would be destroyed if any administrative activity of the national government be curtailed or transferred. Sovereignty in the modern organization of the state is merely the focal point at which the political energies of the nation converge. It represents the strongest social purpose to which at certain times all other social purposes may have to yield. At present the paramount social purpose in the civilized world is still the maintenance of national power. It is the national organization upon which the safety of the material and moral interests of the world still reposes. But there are always large groups of interests which will not be dominated directly by the sovereign state, and whose activities are independent of the latter. The sovereign purpose, while it may eventually dominate, does not by any means at all times include, all other social purposes.

The creation of international groups and organs which we are witnessing may, in the long run, have a tendency to change this focalization of power. There may ultimately be created an international consciousness, interest, and organization so powerful as to make itself the paramount social force. This will not be the work of a single

generation, nor will it be brought about entirely through conscious political arrangements. If it comes, it will be as a result of inevitable convergences of social interest and power. Should it arrive, it will gradually make national sovereignty obsolete. Such a consummation, though its occurrence is not likely for some generations, could not be prevented by a narrow national policy which would attempt to block the normal and natural grouping and organization of interests the world over. We ought therefore not to speak of an abdication of sovereignty simply because one or several interests have been organized on an international basis. The national state still remains in the center of the stage. It merely utilizes these international organizations for the benefit of its own citizens and subjects.

It would also be a mistake — though this error has not always been avoided — to speak of sovereignty as a principle of international law. It is plain that international law does not bestow sovereignty upon the state. On the contrary, it clearly regards it as a question of fact, and simply discusses the conditions under which a certain society may be said to have achieved a sufficient political organization to be recognized as sovereign. Sovereign states, independent political entities, are the agents in international law whose importance is determined by the degree of vigor and efficiency with which they act in the community of nations, but not by their isolation and withdrawal from contact and coöperation. The main principle of international law is community of interests; upon this the law must be based if it is to be respected. Through membership in the international-law union the personality of the state is developed, as is that of man through life in the society of his fellows. These common interests are based on fact as undeniably as is the sovereign power. States have intercourse with one another; they and their citizens need it, and so it will be continued. The relations thus established must be given a normal, orderly form. Therefore, though we are just beginning to create an international jurisdiction, we have long had an international procedure and we are fast developing international administrative law.¹

Through the essential mutuality of the relations of civilized life the sovereign state is practically forced to avail itself of the advantages

¹ See, in this connection, Nippold, *Fortbildung des Verfahrens in völkerr. Streitigkeiten*, 1907, chap. i.

offered by international organization. It is plain that the individual isolated national government is unable to secure for its citizens all the advantages of civilization. Relying merely upon the capacities and resources contained within its national territory, it cannot offer to those dependent upon it the protection and the advantages which, as citizens of the modern world, they have a right to demand. If we consider the most fundamental and rudimentary duty of a civilized state, — the protection against disease and crime, — we immediately discover that the resources of a national administration are inadequate to afford complete security to the citizens. The organization of crime rests on an international basis. Like anarchism, which we have already mentioned, the so-called white-slave trade illustrates the principles involved. The criminal laws of any individual state cannot reach the offenders so as to safeguard its subjects against this most heinous exploitation. Nor is it possible for a state to protect itself against the influx of disease, unless indeed it should, in Chinese fashion, cut itself off entirely from commercial intercourse. In all these matters it must rely upon coöperation with other national administrations, and only in a normal and well-regulated system of international police and sanitary administration can security be found. Similarly, a complete right to a patent or to the reproduction of a literary work cannot be given by single governments, but can result only from the common action of all civilized states. The moral right of the author of a book or an invention to be recompensed for the worth and utility contained in the product of his mind can be protected only within narrow limits by an individual state. The complete establishment of this right is secured only through universal legislative arrangements. Numerous examples of this kind will immediately suggest themselves. It is evident that there are growing groups of advantages which are obtained by men as members of civilized society rather than of any particular state. Such advantages the states owe it to their citizens to foster and develop, in order that the latter may enjoy what in reason they are entitled to. The state is powerless to create these broader rights by its own unaided efforts. It can secure them for its citizens only through coöperation with other states.

International coöperation may, in the present state of our civilization, be represented as an ethical duty. No state has the right, by stubborn aloofness from international movements, to exclude its citizens from

the advantages of civilization. But this ethical duty is reinforced by a very practical necessity, which is plain to any common-sense administration. As a matter of fact, the state which would isolate itself from the postal union or the sanitary union would act in as irrational a manner as an individual who would leave the abodes of civilization to pass his life in the unhealthy and inhospitable wilderness of a swamp. The laws created by international coöperation have an actual and potent sanction in the suffering and loss which are inevitably consequent upon their nonobservance. If we consider for a moment the international organ to which the most positive powers have been given, the sugar commission, we shall recognize the workings of necessity in its creation. The far-reaching powers which have been intrusted to this body did not result from any preconceived plan or any conviction that the establishment of an international authority of this kind would be desirable. On the contrary, this solution was forced upon the members of the conference by the conditions which had been brought on throughout the sugar-producing world by the practice of granting national bounties. The disastrous results produced by this species of competition could be avoided only by the creation of a powerful international authority. The evils were so great that the measures for their removal presented themselves to the delegates in the form of unavoidable necessity ; and they acted in accordance with this conclusion, although they tried to improve the appearance of their action by substituting the word "executory" for "obligatory" in speaking of the determinations to be made by the commission. The decided step forward which was thus taken in the organization of international unity was due not by any means to theoretical considerations, but to the presence of a practical difficulty which could be solved only by committing important powers to an international organ.

The development of international administration is favored in general by the principle that action will not be taken unless all the parties are agreed as to its desirability. In the older type of treaties between nations the purpose was the conciliation and compromise of conflicting interests. The new economic conventions strive to discover, on the contrary, a basis for coöperation, an essential equality of interests among all the nations, upon which permanent arrangements may be founded. The unanimity required for this kind of legislation

cannot however be permanently defeated by mere capricious opposition on the part of one or several states. When it is once clearly discovered that a basis for coöperation exists, the reluctant states will generally be forced in the event to accede to the agreement, because they very soon find that exclusion from the advantages of the union means a serious loss to their own interests.

The effect of this new development, which we have been reviewing, upon the spirit and the methods of diplomacy cannot but be salutary. Although diplomacy has not yet entirely lost its old reputation, according to which its methods were held to be synonymous with shrewdness, scheming, and chicane, it is clearly apparent that a very different view of international relations is obtaining the leading influence in the diplomatic world. Instead of dealing only with the nice balancing of political interests, and attempting to gain more or less ephemeral advantages by shrewd negotiation, the new diplomacy makes its main purpose the establishment of a basis for frank coöperation among the nations in order that, through common action, advantages may be obtained which no isolated state could command if relying merely on its own resources. John Quincy Adams, in his "Diary," says of a certain British diplomat: "The mediocrity of his talents has been one of the principal causes of his success"; and in the past merely neutral social virtues were indeed often accounted sufficient for diplomatic efficiency. The present sets more exacting requirements, and as the complexity of economic and social interests increases, efficient diplomats will have to be men of "great energy of mind, activity of research, and fertility of expedients," to use the words by which Adams expresses the qualities not so essential to ordinary diplomatic intercourse in his day. In order adequately to represent his nation, a minister ought to keep himself informed, through touch with expert opinion and with the progress of affairs, on all the world-wide economic, industrial, and intellectual activities by which the welfare of his nation is intimately affected. A diplomat who masters these relations and keeps himself advised upon these movements will be able to secure many advantages for his own country, and he may moreover perform important services in helping to work out a basis for effective international coöperation in fields where such action is required by the very interests which he more particularly represents.

The process of international organization frequently favors the expansion of the sphere of the national government. When interests are organized upon an international basis, the persons and associations concerned begin to see more clearly how their purposes may be furthered through state action. They consequently demand new legislation as well as the expansion of the administrative sphere, and urge the government to use its organs for the purpose of securing the greatest possible advantages for the individual citizen. The example of other nations is appealed to, and in every way the state is encouraged to make the fullest use of its powers. The organization of the agricultural interests upon an international basis, recent as it is, has already produced an insistent demand for greater state activity. The control which the state exercises over the conditions of labor is stimulated by the international agreements and conventions on that subject. In our country the agitation for a parcels-post service proceeds mostly from those persons who have realized the advantages which our industry might gain in foreign markets through the use of this method ; so that if this system should be introduced, it would be due very largely to efforts to develop our international relations.

It is very important to note that the organization of the economic and social activities of the world is being based upon the representation of interests in definite organs. While the parliamentary systems of national governments still adhere to the abstract numerical idea, the more natural system of interest representation is being used in international affairs. Undoubtedly the international movement will be strengthened by this fact, because a social or economic interest is an entity possessed of independent potentiality of action. As world organization spontaneously takes this form from the beginning, it will profit by the combined energies which all these interests represent.

The effect which international organization has exercised upon the methods and processes of national administration has been salutary. In conventions and congresses methods are compared, criticisms and suggestions are made, and the best experience of the world is centralized, — all of which has been turned to advantage by progressive administrations. Moreover, a certain responsibility comes to be felt by the individual governments over against each other. It would be embarrassing to be discovered in the use of antiquated and unscientific processes. The result is a greater efficiency of administrative action

throughout the world. Through the public organization of universal scientific bodies the latest results of pure and applied science are placed at the disposal of governments. The scientific branches in the administration of modern states are so important and their influence upon governmental action is so direct that the organization of scientific work upon an international basis in itself constitutes a movement of prime importance.

It would be interesting to compare the internationalism of the present with the cosmopolitan movements which the world has seen at former periods of its history. There is a distinct difference between the cosmopolitanism of the close of the eighteenth century and that of our own day. The rationalist cosmopolitanism is still current in much of our literature, although in practical affairs we have almost entirely outlived it in this particular form. It is individualistic and humanitarian, and recognizes no institutions between the isolated individual, on the one hand, and the all-embracing ideal of humanity on the other. Every person is supposed to be inspired with a feeling of human brotherhood, and to strive for the abstract purposes of universality. Cosmopolitanism of this kind caused Byron to weep when the enemy of his country was defeated, and Goethe to look on with indifference when the land of his fathers was invaded by the troops of Napoleon.

The cosmopolitanism of our days is concrete and practical. It rests upon the idea of coöperation in constantly expanding circles. For this purpose adequate institutions must be created in order that international action may become real. The national state is not regarded as a superfluous obstacle. As international advantages are essential to the citizen, so the state remains necessary to the achievement of internationalism. The temper of the age is positive and constructive rather than given to idealism and speculation. The void which the old cosmopolitan ideal left between the individual and humanity is being filled up by the creation of institutions through which the individual may gradually be raised, by almost imperceptible degrees, from the narrow limits of personality to the broad aims of civilization. This internationalism respects the ethnic and national entities of which it is composed. As through the consciousness of the city and of the national state we gradually develop into a consciousness of world unity, we shall not be able to dispense with the traditions and

aspirations which lie back of national sovereignty and give it force. However, the positive ideal of the world to-day is undoubtedly that the whole earth shall become a field of action open to every man, and that all the advantages which may be secured by the energies of humanity throughout the world must be guaranteed to the citizens of each national sovereignty. A new grouping of social, economic, and political interests is being effected, in which, though indeed the national state will continue to hold a prominent place, public and associative action will be dominated to a large extent by forces and considerations which are broader than national life.

This development will also exercise a profound influence upon the attitude of mankind toward war. The older pacifism overlooked the fact that war is only the symptom of a condition in which too great emphasis is still laid on local interests. With the gradual enlargement of the field of economic and cultural activities until what have been national forces shall have a more extensive scope, and with the waning of narrower interests before those of world-wide importance, the incentive to war will necessarily become weaker and weaker, *pari passu* with the increase in the solidarity among nations. More and more reluctant will governments be to interrupt the complex integration of industry and of commerce through war; either these fields will have to be exempted from hostile action, or, as they come to occupy more and more completely our life and thought, war itself will have to be abandoned as a solution of international differences.

While the vista of possibilities thus unfolded is attractive and of great promise, it is nevertheless true that the movement which we have been considering would be retarded and injured by too great expectations and by action which would overlook the present just claims of local autonomy. The basis for coöperative action will gradually unfold itself; and as it does so, the principles of international legislation and administration will assume a character of inevitableness and will be recognized by any particular state as subserving its own interests. Individual initiative, to be effective, should be confined to assisting in the discovery and clear expression of such unquestioned bases for coöperation. Any attempt to urge states into action without showing a specific need, on the mere plea of the interest of internationalism, would be, in so far, to jeopardize the normal development and ultimate success of the great movement which is

one of the most notable phenomena of the era in which we are living. Nor should we expect states readily to give up that power of self-determination, of freely selecting their means, methods, and activities, which constitutes the essence of political sovereignty ; however essential, in their own interest, a participation in common action may be, they still remain the principal guardians of human rights and interests, and ought therefore to retain to themselves the necessary freedom of action which such a trust requires.

GENERAL PRINCIPLES OF ORGANIZATION

At first sight there is little promise of accord in the details of organization and in the methods of the various international unions. They have been founded for a great variety of purposes ; they deal with a multitude of interests representing every branch of human enterprise and endeavor, and having but little in common. There has been no general concerted plan among the governments with respect to the international movement which we are reviewing. The individual unions are rather the result of a spontaneous growth and crystallization than of carefully elaborated contrivance. Every particular one of them has naturally followed that course of development which its own specific purpose has indicated. But when all has been said, and when all these reservations have been made, there is yet discoverable an underlying unity in the movement which enables us to treat it as dominated by certain general principles, no matter how variegated and complicated its individual manifestations may be. In the course of the comparatively short life of the various international unions there have indeed already been developed individual bodies of law, of method, and precedent, which may lay claim to being important and separate entities in the field of jurisprudence and administration — which consequently require separate study, and are, as a matter of fact, dealt with in separate treatises. We need only think of such bodies of international legislation as the European railway freight law, the law of international copyrights, and the rules created by sanitary conventions. Yet if we desire to form an estimate of the tendencies of the international movement and of its relations to national life, it will be necessary to attempt a general survey of the principles and methods employed. Such an attempt to arrive at a

conception of what may be considered the normal action in this great movement will give us a criterion by which individual proposals and arrangements may be judged. It will also enable us to form a more accurate judgment of the general bearing and the tendencies of international administrative activities. Finally, it will protect us from the not uncommon error of exaggerating the importance of the functions created and of the positive powers which have been attributed to these new international organs.

Formation of unions. It is not always easy to tell with certitude whether the formation of a given union is due primarily to public or to private initiative. We encounter commonly an interaction of influences. Private associations or groups of individuals may discover the need for international action with regard to a certain interest, and may undertake to urge the establishment of treaty relations and administrative bodies. Quite generally such persons will themselves organize on an international basis and will hold conferences or congresses where the feasibility of common policies and actions is discussed at length, and where proposals for public unions frequently originate. Thereby governments may finally be moved to take authoritative action in the matter in question, with the result that treaties and conventions will be concluded; or the state organs, desiring to come in closer touch with the efforts of private initiative, may associate themselves for a while with the organizations already established; they may send official delegates to the conferences of the international associations, and out of this coöperation there may be evolved gradually a basis for public action.

In a large number of cases, however, unions have been formed directly by public or state initiative. Nations had early realized the necessity of treaty arrangements on such subjects as the control of communication by telegraph, railway, or the mails. However, the individual conventions, multiplying year by year and containing many divergent provisions, had a tendency to render the subject unnecessarily complicated and difficult for the national administrations. Thus there came about naturally a desire for unification on a general international basis. At other times the technical branches of the national administration discovered in their practical work the need for a general treaty, and setting the government in motion, they secured the direct establishment of conventions and unions.

In exercising its public initiative the state makes use both of technical experts belonging to its administration and of the general diplomatic personnel. Occasionally the basis for a treaty is worked out entirely by technical experts, possibly by medical men in the case of sanitary treaties, or by railway officials in the case of transportation arrangements. Ultimately the results thus carefully perfected will be discussed, from the point of view of general diplomatic and political arrangements, by a conference of diplomatic representatives, which affixes the authoritative seal of signature and ratification. It is a frequent practice to use both diplomatic and technical delegates in the same conference. In such cases the state, of course, expects the diplomatic representative to give to the undertaking the prestige of his office and the assistance of his political experience, in order that the importance of the work may be duly emphasized, and that, on the other hand, the action proposed may be scrutinized from the point of view of national diplomatic interests. The general experience of a trained diplomat on such occasions is also of no little benefit to the negotiators. The technical delegates, for their part, are relied upon to furnish the knowledge upon which the substantive action of the conference will be based; the latter will necessarily draw upon the experience of these men with respect to the form to be given the enactments and with respect to the technical information upon which all its action must be founded. It is unquestioned that the presence of the diplomatic element has frequently acted as a retarding influence. The technical delegates, having experienced the disadvantages of local differences in legislation, enter the conference with more enthusiasm for the international idea. The diplomat, being accustomed to consider every proposal from the point of view of an undiminished national freedom of action, will suspect dangers and will be inclined to oppose any limitation upon the complete diplomatic freedom of the nation which he represents. As we have already noted, the participation of diplomatic representatives in the creation of these various international unions has made demands upon the profession which the older concept of diplomatic action did not include. A successful diplomat to-day must master the intricate organization and interaction of world-wide industrial, commercial, and scientific forces which give to national life a new and broader significance.

In these matters private initiative is of course far bolder and more optimistic than that of the state. It is not beset by the ever-present care to preserve sovereignty intact, nor does it regard every interest from the point of view of national organization. But the very lack of responsibility may at times also be a disadvantage, as is also the want of technical experience when questions of detail in public administration are involved. Private initiative will frequently assume that international society has already been created, ignoring the fact that for the time being the realization of broad aims still depends largely upon the efficiency of the national governments. In its zeal it is apt to forget the natural limitations upon administrative action, and for international purposes will demand acts of governmental interference which it would scarcely tolerate if demanded from the point of view of national policy. The manner in which private initiative often loses the proper perspective is illustrated by the second congress against white slavery, which recommended that the postal administrations should not deliver *poste restante* mail to young girls without the consent of their parents. The difficulties of administration which such an arrangement, well intentioned though it be, would entail were certainly not given due consideration.

The great unions dealing with the communication interests were all the result primarily of public initiative. Treaties between two powers or a group of powers grew up and increased in numbers until, as pointed out above, the unification on an international basis presented itself as the only rational and practical solution of the difficulties. The definite suggestion of forming some of these organizations, such as the railway freight union, came indeed from private individuals, who worked out preliminary projects; but in all these cases the definite steps leading to the establishment of the unions were taken by public authorities. The great sanitary conventions of the last two decades were also the result of public initiative, although in these cases a long series of expert technical conferences preceded diplomatic action. In a similar way the unions dealing with the metric system, the suppression of the slave trade, the sugar bounties, and the publication of customs tariffs, were created by public agencies, as was also the scientific union for the study of geodesy. The international unions dealing with the police of the high seas, as well as the bodies which manage specific local affairs, such as the Danube

commission and the Egyptian *caisse de la dette*, present themselves under the aspect of an extension of national organs of administration for the protection of interests beyond the boundaries of the state, and were therefore naturally the result of direct public initiative.

Private initiative, on the other hand, has been most active and effective in connection with general economic interests in which the political authorities are not so necessarily and directly involved as they are in the control of communication, sanitation, and the police. In the three important fields of literary and industrial property, labor legislation, and agriculture, the public unions which now exist are the result primarily of a determined and persistent private initiative. Two societies, the international association for the protection of industrial property and the international literary and artistic association, agitated for the adequate protection of authors and inventors and worked out definite projects for international conventions. Urged on by this initiative, individual states thereupon took the necessary steps to bring about the convocation of diplomatic conferences through which the subject matter was given authoritative form. Permanent international organs of administration were also created for the safeguarding of these rights.

Among all the subjects concerning which international action has been taken, none perhaps illustrates more strikingly than labor legislation the necessity and promise of this method of procedure, but at the same time the great difficulties which oppose themselves to the realization of any general plan of operation. Early in the development of the international movement it was realized that understandings of a world-wide scope would ultimately be necessary to the very existence of advanced national labor legislation. It would evidently be impossible for an isolated nation to institute a system of perfect protection for its labor forces while those nations who were its principal competitors in the industrial field continued in the use of a system under which labor forces were exhaustively exploited. Another reason for treaty arrangements in this matter is found in the fact that the labor supply is becoming more and more an international commodity. No longer based exclusively upon the native element in any one state, it is determined rather by importation and exportation of labor forces, whose temporary coöperation with local laborers necessitates some kind of understanding between nations

upon this matter. Various international associations of a private nature were formed, composed either of the direct representatives of labor striving for a more complete recognition of its needs, or of persons who interested themselves in the situation of workingmen from a scientific or humanitarian point of view. The labor interest, both in its economic and scientific aspect, therefore received an organization which corresponded to the economic facts involved. A strong sentiment was thus created for the founding of a public international union dealing with labor problems. A number of governments sent delegates to the general assemblies of the international association for the legal protection of labor, giving this organization a quasi-public character. Finally, a diplomatic conference was convened in which certain proposals that had been worked out by the association were discussed, and where certain general legislative principles were adopted.

As we have seen in a preceding chapter the first suggestion toward the establishment of the international institute of agriculture was made by a private person who brought his ideas to the attention of various governments. The proposal was finally taken up by the king of Italy, and public initiative thus took the place of private suggestion. The ideas of the originator of this movement had also been discussed and indorsed by the international association for agriculture, a private organization. In this case the action taken by the public authorities fell far short of what had been expected by the original sponsors of the movement. Instead of creating an organ empowered to take direct action for the protection of the various interests of agriculture, the diplomatic conference which acted as a constituent assembly in this matter did not go beyond founding an intelligence bureau, the administrative functions of which are very limited.

Private initiative has also brought about the creation of international unions with respect to penitentiary science, seismology, the repression of the white-slave trade, and the great humanitarian enterprise of the international Red Cross association. In general it may be said that the movement of internationalism, even in its public or authoritative manifestations, has been advanced most through the associated effort of private individuals. States naturally move with caution in these matters, and it is only when a need has become imperative and when means and methods have been worked out and shown to be safe and

practical, that public authorities feel justified in entering into international administrative arrangements.

When a union has once been created, admission to it is, as a rule, granted freely. Any state may therefore ordinarily acquire membership by merely declaring its adherence to the conventions concluded, and by assuming the burdens imposed by them. Such adherence is notified to the "directing state" — the government in whose territory the international bureau is established — and by it communicated to the other member states. This method prevails in nearly all the unions. An exceptional method is followed in those unions in which very special burdens are imposed upon the treaty states. Thus in the European railway freight union the request of a country to be admitted to membership must be addressed to the directing state; it is then referred to and reported on by the bureau, submitted to the member states, and acted upon by them. Unanimous action of the latter is necessary in order that a new member may be admitted. In the sugar union the request for admission must be acted on by the commission of the union, to whom it is transmitted through the Belgian government, which is, in this case, the directing state. Admission to the union for the suppression of the slave trade may be made subject to certain conditions, which are applied upon motion of the treaty states. The common law of international unions may therefore be stated to be that the unions are open to all nations who are ready to assume the burdens imposed, and that the accession of all civilized countries will be encouraged. The purposes of these unions can of course be fulfilled best with a complete membership, including all the states of the world. Some of the unions, such as the postal union and the agricultural institute, closely approach this condition.

In certain unions membership is limited by natural causes or by the specific nature of the purpose for which the union has been created. The union of American republics is limited by a geographical fact. The European railway freight union, the North Sea fisheries union, the Danube convention, are other examples of special purposes, which imply a limited membership.

Organs and institutions. The method of organization in the international unions tends toward uniformity. There is a general system which may be considered as the normal scheme of organization, although all its individual parts will not be found in every instance.

The tendency toward imitation has manifested itself in this field as in other fields of social enterprise. Methods of organization which, though established in the face of great opposition, have subsequently proved their usefulness and thus justified their existence will naturally be imitated in the creation of new unions.

The constituent assembly and general legislative organ of the international union is the conference or congress. The use of the former term is becoming more general, although the meetings of the postal union are still called congresses, while in the case of the agricultural institute the term "general assembly" has been employed. The attempt to distinguish sharply between the terms "congress" and "conference" seems to be futile. As used in general diplomatic language, the term "congress" may be said to refer to an important assembly of plenipotentiaries for the discussion and settlement of a definite political situation demanding immediate action by the powers. In this manner the term is employed in connection with the congress of Vienna, the congress of Paris, and the congress of Berlin. In the past, congresses of this kind have been called when, as the result of a great war, the political equilibrium had been destroyed and when vast interests were in the balance, requiring authoritative and immediate settlement. The term "conference" is used more generally where the subject of discussion is some specific interest or group of interests. A conference does not ordinarily work in the presence of a political situation which imposes upon it imperative demands of action. It deals with matters in which action seems advisable, in which mutual counsel should be had, but it is free from the immediate urgency of political adjustments. The term is applied even to the general Hague conference, in which the most important interests of nations are discussed by plenipotentiaries. If the phraseology were determined by the importance of the interests involved and by the diplomatic character of the delegates, the term "congress" certainly should be used in this case. The only element which distinguishes the Hague meetings from those to which the term "congress" has been applied in the past is the absence of an urgent political situation calling for immediate international action of a fundamental and definitive nature, such as that taken in 1815, or 1856, or 1878. It may however be that the term "congress" is destined to entire disuse in connection with international meetings of public representatives. The technical reason

assigned for still calling the meetings of the postal union "congresses" is that they have the right and function of making changes in the original convention; as distinguished, for instance, from the conference of the telegraphic union, which cannot modify the original convention, but must confine its action to the provisions of the administrative *règlement*. The reason for this usage is, however, not of universal validity, because, like the postal congresses, conferences of other unions may inaugurate changes in the fundamental conventions; or meetings especially convoked for the purpose of making such changes are designated as conferences and not as congresses.

On the other hand, the usage is growing up of giving the name "congress" to large international meetings of private individuals. Thus we speak of international scientific congresses. In this manner a change in our phraseology seems to be taking place, the more dignified and formal term "congress" being now used for meetings which have no public or authoritative character; whereas assemblies which enjoy diplomatic powers or a public initiative are almost uniformly designated as conferences.

The conference of an international union may either meet at periods whose occurrence is definitely fixed in the convention, or, in a smaller number of unions, at a time determined by the preceding conference, or upon special call by member states. Thus, for instance, the congress of the postal union meets no later than five years after the acts of the previous congress went into effect; the conference of the geodetic union meets every three years; while that of the union of American states meets at a time determined by the governing board of the Pan-American Union, within five years of the last conference. The conference acts both as a constituent assembly and as a legislature. As the original convention was the work of a conference, so, in general, changes in the convention or in additional acts may be inaugurated by it. The ordinary legislation of the union, contained in the *règlements*, is, of course, also subject to action by the conference, although in some cases the initiative in this matter is delegated to the commission. The conferences engage in discussions of questions of general policy, in the comparison of methods, and in the criticism of results. In the scientific unions the advances made by the particular science, reports on investigations, and the determination of methods to be employed in future study constitute the principal subjects of

discussion, outside of the technical rules which may be made for the guidance of the executive organs.

For action in congresses and conferences, unanimity is the general rule. Readiness to subordinate national interests to the vote of a majority of states has as yet not been manifested to any large extent. Each member of the union reserves to itself the right to approve or disapprove of any important change or innovation introduced in the organization. It is a general principle of the action of international unions that it must not bear upon subjects in which the solidarity of the nations interested is not fully recognized. As long as differences of interest are keenly felt, common action is impossible. Of course it always remains open to the nations which desire certain arrangements not yet favored by the totality of the membership, to form a restricted union for the specific purpose of enjoying among themselves the advantages of the measure proposed. If this action is really of such a nature as to be inherently advantageous to all states without distinction, the tendency is for such restricted unions to grow larger until they finally absorb the entire membership of the respective union. In developing international coöperation, too great reliance ought not to be placed, however, upon the mere force of the majority. The only validity that may be attributed to it is that inherent in the reason and practicalness of the ideas suggested, which may ultimately bring about unanimity among all the nations concerned. In order that any action may be had, it is therefore necessary that a common standing ground, a coincidence of interests, should be discovered. At times, however, action is also favored by generous impulses and by the feeling that something must be done by an international conference in order that its existence may be justified.

There are certain exceptions to the rule requiring unanimity of votes in the international unions. In the general assembly of the agricultural institute two thirds of all votes constitute a quorum and can therefore take action. The sugar commission, which enjoys certain legislative powers, acts by a majority of votes. The same is true of the superior council of health at Constantinople. In the postal union a peculiar provision obtains. In the interval between conferences, suggestions for changes in the legislative arrangements of the union may be proposed by any three member states. Such proposals will then be submitted to all the members. In order that they may be adopted,

unanimity is necessary only in proposals affecting the most important parts of the convention ; with respect to other parts a two-thirds vote, or even a simple majority, is sufficient.

In nearly all the unions a distinction is made between the convention and the *règlement*. The former determines the organization of the union, together with some of the fundamental principles upon which it is to operate. Thus, for instance, the postal convention establishes the principle of free transit and rules defining the responsibility of the various administrations for losses of postal matter. The ordinary operations of the union are regulated by the *règlement*, which has the juristic character of an administrative ordinance. Changes in the convention necessitate diplomatic action, and require, therefore, greater formality as well as more extensive deliberation. The presence of diplomatic representatives is always necessary when a convention is to be changed. Changes in the *règlement*, however, may be made by technical delegates ; or, in certain cases even, the function of determining the administrative rules may be delegated to a commission. The commission of the sugar union, for example, elaborated the *règlement* (June 20, 1903) which makes detailed regulations of an administrative nature respecting the customs treatment of sugars, their transit and importation. The administration of sanitary affairs in the ports of Turkey and the near East is determined in its details by the *règlements* worked out by the councils of health at Constantinople and Alexandria, which in turn are based on the general convention.

The next organ of the international unions to be considered is the commission. This may be defined as a governing board whose duty it is to superintend the administrative work of the union carried on by the bureau and other agencies. As just stated, the commissions are sometimes intrusted with the duty of preparing administrative regulations, or even, as in the case of the sugar union and the sanitary councils, of working out a complete code of administrative action. Their administrative control is therefore at times of such a nature as to assume a quasi-legislative character. The commissions also exercise a certain fiscal control over the expenses of the bureaus of the union, and in some cases arbitral functions have been intrusted to them. The commission is a recent development marking a more complete evolution of the international union. In the older unions,

commissions have not been instituted, but the function of control which they ordinarily exercise is in these cases intrusted to the government in whose territory the bureau is situated.

The commissions are made up of representatives of the treaty powers. In some, all of the treaty powers are represented. Thus the governing board of the Pan-American union is composed of the representatives of the Latin-American republics at Washington, under the presidency of the American Secretary of State. The commissions of the sugar union and of the international institute of agriculture are also composed of representatives of all the treaty states. In some of the unions, however, the commission is elected by the conference, and contains a smaller number of members than the number of treaty states. Thus in the metrical union it is composed of fourteen members, half being renewed at each session of the conference, i.e. every six years. The permanent commission of the geodetic union is composed of two *ex officio* members and of nine others nominated by the conference. Four or five of the positions are refilled at each meeting of the conference, every three years. Other unions which make use of this organ are the penitentiary union, the union for the exploration of the sea, hygiene and demography, seismology, and formulæ for potent drugs.

The requirement of unanimity is not usually applied to action by the commissions. Even the sugar commission, which is intrusted with the most important powers, acts by a majority of votes. As the administrative and quasi-legislative functions of these commissions grow in importance, the principle of international action will be strengthened, especially on account of the absence of the majority requirement. The commission will therefore be seen to constitute an important step in advance in international organization, as implying that in some cases nations have come to recognize the necessity or desirability of subordinating their special wishes to the will of the majority. Most of these unions, it is true, deal with scientific interests, and the functions of their commissions are therefore not apt to result in political action. But the establishment of the principle of majority action is nevertheless favored by this form of organization, and especially by the admission of that mode of action in the sugar union, which deals with most important economic and fiscal interests.

Practically all the unions make use of a central office or bureau as their chief administrative agency. The bureau is the connecting link between the various national administrations. It furnishes them information about the interests of the particular union, acts as intermediary between the governments, and carries out the specific administrative duties assigned to it in the *règlement*. Though its duties are chiefly informational, instances are not lacking where it has been intrusted with more positive powers of administration, and even with arbitral functions. While the term "bureau" is the ordinary designation, the words "secretariate" or "office" are also occasionally employed.¹ All the unions which use the commission employ also the bureau as an administrative agency; in addition, the following unions have international bureaus: telegraphy, posts, railway freight, industrial and literary property, publication of customs tariffs, labor, slave trade, and catalogue of science.

It remains for us to consider the functions of the directing and supervising government, i.e. the government in whose territory the international bureau is situated. It is the ordinary practice to locate the central office of a union in a small neutral state. Thus far Switzerland has been the favorite home, harboring the central offices of the telegraphic, postal, railway, industrial and literary property, labor, and penitentiary unions. The preference originally accorded to Switzerland is probably due to the fact that this country is both centrally located and entirely independent of extraneous influences; its use of four distinct idioms is also an advantage. More recently a number of bureaus have been located in Belgium (customs tariffs, sugar, slave trade, potent drugs). The jealousy which formerly prevented their location in the territory of more powerful nations seems to be yielding somewhat at the present time, for in addition to the older scientific bureaus, the new bureau of hygiene has been established at Paris, while Germany harbors the central office of the two scientific unions of seismology and geodesy, and Italy has become the home of the international institute of agriculture. It will be noted that nearly all these unions established more recently have created commissions or governing boards. In the unions which have no commission — this is the case with most of the unions located in Switzerland — the regulation of

¹ The bureau of the union of American republics is now known as the "Pan-American Union."

the administrative organization of the bureau, and the general supervision of its work, is left to the directing government. The bureaus situated in Switzerland are under the control of one of the Swiss departments, such as the Department of Post Offices and Railways. The action of the Swiss government with respect to the civil service of these bureaus has been criticized because of the somewhat narrow policy of confining appointments to these positions to Swiss subjects. The total advantage which Switzerland draws from this arrangement, however, is not very extensive, as the budgets of all these unions are exceedingly small. In Belgium the antislavery and the customs tariffs bureaus are under the direct charge of the Foreign Office. The Pan-American Union comes under the control of the government of the United States only inasmuch as the American Secretary of State is the president of the governing board of the bureau.

In unions which use the commission as the organ of control, the directing government simply exercises the function of a diplomatic intermediary between the treaty states and the bureau. Thus, for instance, communications to the sugar commission are made through the Belgian government. There seems to be a certain reluctance to permit the international commissions or offices to establish direct relations with the treaty governments. They may indeed in some unions furnish information by way of routine correspondence, but more formal matters are usually communicated through the foreign office of the government in whose territory the bureau is situated. The Pan-American Union corresponds with the governments through their diplomatic representatives in Washington. Correspondence with any government is permitted only in the absence of diplomatic representation; but the union may correspond directly with the various Pan-American commissions.

Legislation. A general review of the field of legislation as occupied and developed by the international unions reveals that there are three classes of arrangements in which all the legislative acts of unions may be grouped.¹ The most notable of these classes contains the efforts which are made to bring about a unification of the substantive law governing any international interest. Uniformity of legislation is an ideal which under the present conditions of national life can be applied only to a limited number of general principles. Moreover, it is

¹ The more general phases of this subject have been treated above, p. 135.

not in all fields that the process of international unification is at the present time considered feasible, even in a partial form. There is, however, one branch of law in which a unifying activity is demanded by the most essential characteristics of modern civilization. The development of rapid communication has very nearly made the world into a unit in so far as the transmission of intelligence and the transportation of passengers and goods are concerned. Even before this advance had been made, the convenience of having a uniform law in matters of transportation by sea and land was generally recognized; the recent developments already mentioned have only emphasized this desire. The most substantial achievement which has thus far resulted from the international movement is the creation of a railway freight code for the European continental states. The questions arising in transportation are here juristically treated upon a uniform basis, with the result that the freight intercommunication between the continental states of Europe has been to a large extent freed from difficulties and annoyances. A determined effort is even at the present time being made to reduce the principles of the maritime law to a condition of uniformity. As the law merchant and the maritime law were originally international, or rather had the character of a world law independent of national jurisdiction, created by the spontaneous action of merchants, bankers, carriers, and shippers throughout the medieval world, even so it is hoped that at the present time, when the interests of communication have so decidedly transcended national boundaries, we may again unify the maritime law and give it a world-wide currency. In the conventions relating to the telegraphic and postal unions, certain general principles respecting the duties and responsibilities of public administrations have been definitely settled. In some of the unions the establishment of uniform principles of law for all the nations is indeed the prime motive of action. Thus the international association for labor legislation works specifically toward the uniformity of labor-protection laws, and in the conventions already elaborated it is this principle which is applied, though thus far only a very limited field has been covered.

The second class of international legislation consists of administrative regulations. In this class, too, the ideal of uniformity is paramount, — the methods of the various national administrations are to be simplified and based upon a common standard. But in addition

to the unification of administrative processes coöperation pure and simple is aimed at, and therefore legislation of this kind often only establishes certain new relations between the governments by which there may be bound together administrations that retain in the management of their own affairs different rules of action.

The third class of international legislative arrangements rests upon a different idea. In this class it is not uniformity that is primarily sought, but mutuality of advantages. No attempt is necessarily made to modify the details of the national administration, but it is simply provided that the subjects of each one of the treaty states shall be admitted to the legal advantages granted to the subjects of every other. Thus the unions for the protection of industrial and intellectual property have until recently worked mainly with the purpose of obtaining a mutuality of advantages, so that, even without any changes in the copyright law of a given state, foreigners might be admitted to an enjoyment of the protection under such legislation, in return for a similar benefit granted by their own sovereign state. But it must be noted that mutuality will after all rarely be the sole purpose of an international union. Even in the unions mentioned, the purpose of securing mutuality is accompanied by an effort to assure a minimum of protection for copyrights and patents in all the treaty states, and furthermore to arrive at a uniform interpretation of disputed questions in the law of copyrights, such as, for instance, the question of the nature of publication and of the dependence upon the original patent or copyright of a privilege granted to the same person in a foreign country.

We may note in passing that it requires rather more of an effort to achieve uniformity of substantive law than to harmonize administrative methods and processes. The latter may be modified by mere executive orders, while a change in the substantive law of a state necessitates a more formal act. The reaction of treaty arrangements upon the national systems of law and government is therefore far more powerful in the field of administrative action than in substantive civil law. In the scientific unions the uniformity of processes of investigation constitutes, of course, the prime purpose of common action. The unifying tendencies of these organizations do not encounter the difficulties occasioned by national differences of administration to nearly the same extent as is the case in the unions dealing with political or economic interests. But also in those unions which

afford a protection against disease, such as the sanitary union or the union against phylloxera, no great difficulties will be encountered by the demand for uniformity when it is once made clear that the judgment of science has positively decided that certain methods are indispensable if a country is to be protected from invasion by disease. I do not mean to say that these unions will be free from the difficulties caused by national differences in administration, and by the tenacity with which local methods are maintained; yet their action will in general be the less impeded by such considerations, as it incorporates the dictates of science, against which there is no appeal in matters of this kind.

The nature of the substantive rules enacted by international legislation is, as has already been indicated, characterized by simplicity and by perfect coaptation. Before a rule is given sanction by international treaty, its applicability and validity must have been tested to the complete satisfaction of the treaty states. Mere experimentation on such a vast scale is inadvisable. The consequences of legal arrangements must be tested either on a national basis, or in a more restricted international union, before general rules of a legal nature will commend themselves to a large group of states for permanent adoption. And yet when the entire field of international legislation is surveyed, it is surprising what substantial bodies of law have already been created by such common agreement.

The nature of the rules enacted may be illustrated by the following examples: In the law of communication, the principle of freedom of transmission of telegrams, wireless messages, and letters has been established. In the European freight union, the duties of a common carrier are enforced in so far as the acceptance, care, and delivery of merchandise are concerned; moreover, the responsibilities of the carrier are strictly defined, so as to exclude national differences of interpretation. The postal union well illustrates the process of international legislation. Only comparatively few rules of practice, and these of a very general character, have been established by law for the entire union. The principal among these relate to the obligatory acceptance of mail matter, registry and indemnity for the loss of registered packages, the relations of the postal administrations to one another, the charges to be made for international services when prepaid and the liabilities incurred in case of insufficient prepayment,

the forwarding of letters and parcels, the classes of articles to be excluded from the mails, the exchange of mail with warships, and the counterfeiting of stamps. All such matters are administrative in their nature, but with respect to them general rules of action and responsibility must be established, whether for all nations or for the members of a restricted union. Thus, after the principle had first been tested by the experience of a smaller group of nations, the postal congress of Rome in 1906 finally made general the responsibility of postal administrations for the loss of registered mail matter.

The legislation of the sanitary union may be illustrated by the following details, which are contained in the treaty of 1903: The duty of notification when epidemic exists, the declaring of quarantines and their duration, the measures of protection allowed to be applied by an individual state with respect to the disinfection of incoming passengers, merchandise, and ships, and special dispositions regarding the Red Sea, Suez Canal, and Persian Gulf. The convention on labor legislation provides for uniform principles with respect to the forbidding of night labor by women and the use of white phosphorus in the industrial arts. The sugar union has limited the amount of duty to be levied upon imported sugar and has entirely forbidden the granting of bounties to sugar producers. Enough examples have perhaps been given to indicate how largely international legislation is concerned with administrative methods and processes. Efforts to make uniform laws by which the rights of individual citizens would be regulated are, however, also encountered, although they are prominent only in those unions whose sphere of action directly affects private law. Of this nature are the rules prohibiting certain kinds of labor or the use of certain substances in manufactures, as well as those more comprehensive attempts to standardize the protection of copyrights and patents, and the rules on conflict of laws.

Administrative activities. The administrative activities of the international unions vary with their manifold purposes. Thus far, national governments have exhibited great reluctance in endowing the organs of the unions with direct powers of action. As long as they confine themselves to establishing means of communication between governments, to affording occasions for the periodic interchange of opinions and comparison of results, even the greatest upholder of national sovereignty will not discover any dangers in such arrangements. But

once permit the organs thus created to make binding decisions or to take administrative action which the individual sovereignties are bound to respect, and an entirely different situation is created. Yet the needs of international intercourse have become so prominent that it has been found imperative in many cases to give a certain limited power of action, carefully guarded and well defined, to the international administrative organs.

Their general purpose is of course to serve as a link of communication between the contracting states, so that, should these desire to bring about any change in administrative arrangements or in the relations among themselves in the matter covered by the respective union, they will have ready at hand an organ through which their efforts may legally and properly be made. The bureaus of the unions are therefore quite generally charged with the duty of giving due form to demands for changes in the respective convention or *règlement*. More initiatory or authoritative functions have been intrusted to a number of them. Thus the slave-trade bureau at Zanzibar superintends the enforcement of the general antislavery act, which gives it a certain power of control over the vessels furnished by the treaty powers for police duty in African waters. The sanitary councils of Constantinople and Alexandria exercise a direct administrative control over the various quarantine stations of the Levant and the Persian Gulf. The mixed commission of the Danube, the *caisse de la dette*, and the Turkish debt commission fulfill specific functions indicated by their local purposes. The Pan-American Union has been charged with the duty of obtaining information for the governments of America which may be useful to them with regard to projected public works. The governing board of the bureau, moreover, fixes the date and program of future conferences. The international patent bureau at Bern, in behalf of a restricted union for this purpose, acts as a registry of trade-marks, which are thus made *ipso facto* valid in all the states signatory to the convention. The work of the metric bureau and of the bureaus of the scientific unions can be called administrative only in the sense that it aims at the evolution of more adequate methods of investigation in the sciences concerned. The metric bureau, however, has the specific administrative duty of preserving the original standards of weights and measures, and of issuing to governments and associations duplicates of such standards carefully tested as to their accuracy.

More extensive and important administrative powers have been intrusted to the sugar commission. As already noted, it has the quasi-legislative function of preparing regulations for the customs administrations with a view of preventing the secret importation of bounty-fed sugars into the treaty states. The commission also decides upon requests for the admission of new members. In addition to these and other functions, it has the very important power of making certain determinations of fact on the basis of which the legislation of the treaty states must be modified under the provisions of the convention. Thus it is instructed to ascertain if in any of the contracting states any sugar bounty is given ; further, to determine the existence of bounties in noncontracting states and the amount of such bounties, with a view to applying the compensatory duties provided for in the treaty ; and, finally, it may authorize the levy of a surcharge by one treaty state against another. The treaty not only fixes the maximum duties permissible on sugar imports, but it also establishes a general scale of countervailing duties to be levied against countries paying a bounty to their sugar producers. But all the determinations of fact upon which the levying of such duties is dependent are made by the international sugar commission. It is difficult to define a function of this kind. It may perhaps be described as essentially judicial in that its main element is the determination of fact ; but as it is a situation rather than an isolated fact which the commission is to determine, its power may in many cases be in its effect practically legislative, in that it may determine the duty of any treaty government to levy certain taxes or to make certain administrative arrangements. The functions attributed to the sugar commission include the greatest powers as yet intrusted to any international organ. The policy of granting such attributes was not discussed as a theoretical question, but the course of action was forced upon the treaty states by the situation of the sugar industry at the time when the treaty was concluded.

It is quite a general practice to give functions of a fiscal nature to the international bureaus and commissions. Sometimes accounts between different national administrations are to be settled. Thus, in the postal union, the bureau acts as a clearing house between the administrations and provides for the settlement of unsatisfied balances. In a similar way the bureau of the railway freight union acts as a fiscal center for the collection of arrears and the settlement of balances

between the administrations. The bureau for industrial property, which is charged with the special work of trade-mark registry for the restricted union, derives a direct income from this service, as it levies a fee of one hundred francs for the registry of a trade-mark and fifty francs for each additional trade-mark registered by the same proprietor at the same time. The proceeds from these fees are, after deduction of the expense of administration, divided among the members of the restricted union. The governing board of the Pan-American Union deliberates on and fixes the annual budget of the bureau, which must be submitted to it by the director of that institution; a similar financial control is exercised by the council of the bureau at The Hague.

The financial support of the international bureaus and commissions is usually derived from direct contributions by the member states. In some instances these contributions are made *pro rata*, according to the population of the member states (e.g. American union), or the expense may be borne in equal shares by all the members (e.g. sugar union). In the railway union the expenses are borne in proportion to the mileage of railways operated for international purposes in the various countries. Another method is to divide the member states into classes and to attribute to each class a certain number of units in the expenditure. Thus the members of the union for the protection of industrial property are divided into six classes. Those belonging to the first class pay twenty-five units, those of the second class twenty units, and so on down to the sixth, which pay three units. The annual expense of the union is divided by the total number of units, and the individual unit is then multiplied by the number associated with a particular class. A similar system is used in the international institute of agriculture, the postal, and the sanitary unions. The treaty states are given the choice as to which group they desire to enter. Stringent regulations covering default of payment are not always made, as the national self-respect of the member states is deemed a sufficient guaranty of payment. But in some cases a definite sanction is provided; in the metric union, for instance, the failure of a member state to pay its quota for three years in succession results in the striking of its name from the list of membership. It occasionally happens that the international unions receive special support from a particular nation, or from private sources. The American union thus recently received the sum of \$750,000 from

Mr. Carnegie for the purpose of erecting a suitable building as a home for its bureau ; and upon the establishment of the international institute of agriculture, the king of Italy made a very substantial donation for the purpose of assisting in its maintenance.

The conventions by which international unions are created generally contain a determination of the maximum of annual contributions or expenses. While the budgets of the states and of the unions are usually annual, governments nevertheless bind themselves in many cases to support the work of a union for a period of years. Dependence of international activities upon annual budgets would be a great disadvantage, in that organizations which deal with big interests ought to plan their work for a long period in advance. The directing government often acts as the treasurer or financial representative of the union. Thus, according to the *règlement* of the postal union, "The Swiss administration supervises the expenses of the international bureau, makes the necessary advances, and prepares the annual account, which is communicated to all the other administrations." The same system is followed in the telegraphic union. Funds for the support of the sugar union are paid to the Belgian government and are applied by it to the purposes of the organization. On the other hand, the idea of endowing international unions with an independent financial system is beginning to find favor. Thus the Pan-American conference at Buenos Aires provided for an independent treasury and separate fiscal accountability of the Pan-American union in Washington. After the annual budget has been prepared by the director general and adopted by the governing board, it is communicated to the member states ; they are then held within a certain period to pay their quota into the treasury of the union. An auditing committee is appointed by the governing board for the purpose of making a complete annual revision of accounts.

In some of the unions, methods have been established for the arbitration of controverted questions. It is evident that a complete organization of internationalism would involve the creation of international tribunals in which controversies with respect to the various interests represented might be heard and decided. The general opposition which the principle of obligatory arbitration has encountered has thus far prevented any far-reaching action in this matter. Nevertheless, in a number of instances, arrangements for arbitral

settlement of controversies have been concluded, which may indeed be looked upon as important precedents in the general movement. When at the second Hague conference the question of arbitration was being discussed in committee, it was strongly urged and seriously considered that all the interests which had been publicly organized upon an international basis should be made subject to arbitration procedure.¹ This fact very well illustrates the connection between the establishment of the unions and the growth of a general feeling of international community. It was not merely an accidental suggestion that was made at The Hague, but rather the announcement of a principle which takes account of the most salient facts in the present organization of the civilized world. If certain international interests have arrived at a stage where their importance is recognized to the extent that separate international institutions have been created to guard over them and to develop them, it may well be argued that these very interests constitute the most natural subjects for arbitration. If their administration has been made international and to a definite extent common among all the nations, the decision of controverted questions with respect to them may also safely be left to an international organ. Although the opposition to the general principle of arbitration was still so strong upon this occasion that the above suggestion was not enacted in the form of a convention, it nevertheless embodied a sound principle of policy and is at present influencing nations in the making of special treaties upon this subject matter.

Turning, now, to the specific arrangements for arbitration which have already been instituted, we note that in the postal union the bureau is instructed, upon demand of the parties, to give advice on controverted questions. Moreover, it is provided that questions concerning the responsibility of any administration under the postal convention and disputed interpretations of its provisions shall be

¹ The proposal contemplated that controversies of a legal nature, and especially those relative to the interpretation of existing treaties, should be submitted to arbitration; among the classes of treaties to be included in this arrangement were the following, relating to international unions: protection of laborers, patents and copyrights, monetary systems, weights and measures, sanitation, phylloxera, and animal diseases. M. Alberto D'Oliveira, a delegate of Portugal, spoke as follows about this matter: "The world-wide conventions establish the accord of converging interests, the accord of all the states to bring about a unification of international services. Here there is no occasion for a collision of interests; whenever there occurs a divergence in the interpretation of treaties, all the states have the same interest in obtaining an equitable solution." (Session of Committee A, August 15, 1907.)

submitted to arbitration upon the instance of one of the parties, the arbitrators in such case being two or three impartial governments. This provision is of great interest in that it represents the first enactment by public authority of the requirement of compulsory international arbitration. Restricted as it is in its sphere of application, it nevertheless contains the complete principle of compulsory arbitration without abatement, and therefore may well be cited as a notable precedent in the future development of that method of procedure. Up to 1907, twelve cases had been submitted to the postal bureau for advisory arbitration, and three had been decided definitively by arbitrators.

In the railway union the central bureau is charged, at the demand of the parties to the controversy, to pronounce arbitral sentences in disputes between different railway administrations. The suggestion made in 1904 that this power should be extended to controversies between railway administrations and private persons was not adopted by the conference. We have already seen that the determination of facts made by the sugar commission may be considered as quasi-judicial in their nature; but in addition to this duty, the commission is charged to give advice on disputed questions at the request of the governments or their delegates. The convention for the regulation of wireless telegraphy also provides for the arbitration of controversies concerning the interpretation and execution of treaty requirements.

The most common function of the international bureaus is that of furnishing reliable and adequate information concerning the particular interest they deal with. This is the main work of such bureaus as that of industrial and literary property, the American republics, customs tariffs, labor, sugar, agriculture, hygiene, and the slave trade (Brussels). It was as purely informational agencies that most of these bureaus came into being. This truly inoffensive function became the entering wedge for other and more important attributes, but even considered entirely by itself it is by no means of small importance. As a basis for national legislation, impartial and reliable information about the subject matter involved, from the abundant sources of international experience, may best be furnished through the central service of the various bureaus. National legislation is thus enabled to take advantage of a wider experience, so that it may avoid the difficulties and drawbacks of local variations and local ignorance of the broader conditions of legislative problems. World-wide information

is the only sound basis for a growing enlightenment in law-making. In administrative work governments will find the informational function of the bureaus of even more constant and general advantage. An administrative office is reluctant to send letters of inquiry to a foreign government. It may prefer, out of political reserve or for other reasons, to rely upon private sources of information — limited, partial, and in many ways inadequate. A thoroughly effective international service of information ought to justify itself primarily through active assistance to administrative offices in the various treaty states. The publications which have from time to time or at regular periods been issued by the bureaus have in most cases been of unquestioned advantage to governments and to the public.

Closely allied to the service of furnishing general and specific information is that of preparing matters for the conferences of the unions, a function which is intrusted to many of the international bureaus. The bureau of the institute of agriculture, for instance, is instructed to propose measures for the protection of the common interests of agriculture. The Pan-American Union has been directed to make special investigations of topics proposed for action by the international American conference. Such reports must be prepared at a time sufficiently in advance of the conference, in order that the individual governments may examine the matter with a view of instructing their delegates on the basis of the facts set forth. Preparatory work of this kind is done also by the railway bureau and by the bureau of the sugar union.

As we consider the totality of administrative activities centered in the unions, we again note the extreme reluctance which nations have hitherto felt toward endowing these international organs with positive powers. It is very common to exaggerate the importance of their functions. The railway bureau, for instance, is sometimes portrayed as in a measure controlling the various European railway administrations. In order not to receive a mistaken impression, it is necessary to remember that these institutions are primarily organs of information and communication. Other functions, as we have seen, have been granted, but they are thus far exceptional rather than normal. They point to future possibilities of development rather than to general present achievement. We need only look at the small budgets of these international institutions to understand how unprepared are the national

governments to give them a powerful backing and support. On an annual allowance of from 60,000 to 125,000 francs, such as the bureaus in Switzerland enjoy, a complicated administration cannot be developed. However, what has actually been accomplished with such limited means is the more remarkable. Notwithstanding the limitation in functions and resources, it is unquestioned that the international bureaus have succeeded in making for themselves a prominent place in the modern civilized world, a place which they owe partly to the circumspection and wisdom with which their affairs have been managed; partly, however, also to the great and growing importance which we cannot fail to recognize as belonging to the international organizations which these institutions represent.

CHAPTER VI

INTERNATIONAL UNIONS AND WAR¹

The effect of a declaration of war upon treaty arrangements between the belligerent powers is one of the most unsettled subjects in international law. That military hostilities should carry with them a serious interruption of ordinary relations between the respective states and their citizens is, of course, inevitable. The old view, however, that a state of war absolutely annuls all treaties existing between the belligerents at the outbreak of hostilities can no longer be accepted. Our ideas in this respect have to be modified and adapted to the changed conception of the character of war. War no longer is looked upon as involving in absolute hostility all the citizens of the belligerents, even as to the most peaceable pursuits; it is no longer the complete negation of lawfulness, the unchaining of all the barbarous impulses of which mankind is capable. Instead of destroying all law, war is itself subject to legal restraint; and as far as it affects individuals, it merely modifies the execution of jural remedies, but does not abrogate legal rights and principles. The old conception of warfare which manifested itself during the Thirty Years' struggle, and even later, was that all the furies of hatred should be let loose against mankind and all it holds dear, as far as included in the enemy state. The terrors of these ravages led Grotius to reflect upon means to protect humanity

¹ *Annuaire de l'institut de droit international*, 1879, 1902, 1906. Fischer, D. P. D., *Die Telegraphie und das Völkerrecht*, Leipzig, 1876. Kraemer, *Die unterseeischen Telegraphenkabel in Kriegszeiten*, Leipzig, 1903. Rey, F., "Le réseau télégraphique sous-marin en temps de guerre," *Revue générale de droit international public*, 1901. Rolland, *De la correspondance postale et télégraphique dans les relations internationales*, Paris, 1901. Scholz, F., *Krieg und Seekabel*, Berlin, 1904. *Drahtlose Telegraphie und Neutralität*, Berlin, 1905. Wilson, *Submarine Telegraphic Cables*, Washington, 1901. Catellani (Enrico), *Condizioni ed effetti giuridici dello stato di guerra*. Maurel, *La déclaration de guerre (thèse pour le doctorat, Toulouse)*. Renault, "Les unions internationales," *Revue générale de droit international public*. Renault, "Protection des cables sousmarins," *Revue de droit international*, Vol. XII, p. 255. De Martens, G.-F., *Über die Erneuerung der Verträge in den Friedensschlüssen der europäischen Mächte*, 1797. Jacomet, R., *La guerre et les traités*, Paris, 1908. Zuculin, B., *I cavi sottomarini e il telegrafo senza fili*, 1901.

from such outrages. He says: "Many very strong reasons determined me to write. I have remarked on all sides in the Christian world such an unbridled license in warfare that the most barbarous nations would blush over it; arms are taken without reason and for the slightest pretexts, and when once they are held in hand, men trample under foot every divine and human right, as if thereby one were authorized and firmly resolved to commit all kinds of crime without any check." Since then, through the labors of Grotius and his successors and through the work of responsible statesmen in control of national armies, restraints have been placed upon the excesses of war, and gradually the character of that terrible procedure has been fundamentally changed. We have already established on a secure foundation the principle of the exemption of noncombatants from the sufferings of war. If war is to be a trial of strength, affording a faithful index of national power and resources, everything resembling a debauch must be strictly excluded. Indiscriminate cruelty and robbery not only offends our sense of justice, but it directly weakens the culpable army in keeping up to the requirements of modern warfare. The idea that war must be made as terrible as possible still has some adherents, but the tendency of action and legislation is in a different direction. That nation will be most likely to be successful which is able to control its military forces absolutely, to keep them from robbery and general interference with private rights, and to have them concentrate their efforts on the great problems of modern military organization and action. Elements that will make for success in future struggles, should they arise, must be sought among such as a high power of efficient organization, the grasp of technical detail, the successful handling of complicated mechanisms (like battleships), and the maintenance of discipline upon a level where the rights of non-combatants will be absolutely respected. These capacities will bring success, rather than preying on peaceful commerce on the high seas, ravaging fertile territories, and bombarding defenseless towns. The time is not far distant when all such barbarous excesses will appear beneath contempt.

This changed conception of war has affected our views on the mutual relations of subjects of belligerent states. The ordinary productive activities of life are already heavily handicapped by the burden of armaments; they are, therefore, demanding and receiving greater

immunity from the danger of interference. It no longer seems preposterous that subjects of different belligerent states might have peaceful economic relations with one another even during warfare. The last Hague conference went so far as to adopt a rule to the effect that "it is especially forbidden to declare extinguished, suspended, or unenforceable in a court of law the rights and rights of action of nationals of the adverse party." Though there is considerable difference of opinion as to the exact meaning of this clause, even under the narrowest interpretation it involves an enormous advance in recognizing the exemption of private rights from impairment through war.

The matter which interests us directly in this place, however, is the effect of war upon treaties. The old absolute rule that all treaties are annulled by war has, as stated above, been abandoned in practice. The rule most generally adopted by authorities at the present time is stated in this language by the French Court of Cassation: "It is necessary to distinguish general and political treaties regulating the conditions of peace and of alliance between two or more nations, from special treaties of hospitality, commerce, etc., which touch more particularly the interests of private persons in the two states; though war destroys the former, it only suspends the latter, which resume their full force when peace is reestablished, by application of the principle, *Cessante causa, tollitur effectus*."¹ Dambach, in Holtzendorff's treatise, expresses the consensus of authorities in saying: "Nonpolitical treaties, especially those serving private interests, such as treaties of commerce, communication, postal service, extradition, etc., are not abrogated by war. It is the better opinion that not even all of such treaties are suspended, but only those the execution of which would be incompatible with a state of hostility; especially those whose enforcement would strengthen either party in warfare." The latter part of this dictum, though it may appear to be a little in advance of prevailing practice, undoubtedly does embody a just idea of international relations. The principle to be used as a basis for our judgment in this matter must be sought in the consideration as to whether we shall secure to the international economic and cultural activities and relations of mankind a continuous, uninterrupted existence. These relations constitute the normal state of human affairs from which war

¹ Isnara Blanc contre Perralès; Sirey, 1859, Vol. II, p. 605.

is a derogation ; it ought, therefore, to be understood, that a clear military or strategical necessity must be shown before peaceful activities shall be interfered with. Annulment and interference are no longer the rule but the exception. Though during warfare these interruptions may occur frequently enough to become common, yet the fact remains that they are exceptions ; and the world is ready for a rule that in so far as not specifically interrupted, the ordinary life of economic and cultural relations shall go on. When interruptions have to be made, the natural relations are resumed as soon as the disturbing cause has passed away.

Reduced to more definite terms, it would follow from this principle that upon the conclusion of peace it would not be necessary specifically to reestablish all treaties existing between the belligerents at the beginning of war ; but that even without such specific mention, all treaties relating to communication, economic activities, private rights, and intercourse between subjects of different nations would revive and regain their full force.

Glancing at the practice followed in connection with the wars of the nineteenth century, it appears that the above principle has not yet become fully established. In peace negotiations it has often been asserted categorically that all treaties had been annulled by the declaration of war. Yet when we study more in detail these negotiations and the resultant treaties, we find that the old principle of absolute annulment has hardly ever been maintained in all its rigor. Thus, in the peace conference following the Crimean War, many general assertions of universal annulment were made ; but Count Buol, nevertheless, insisted upon the permanence of the rights acquired under the Turkish capitulations, and when the treaty was finally concluded, it referred in terms only to treaties of commerce and "establishment or domicile." Even in these matters the arrangements existing before the war were kept in force, while other treaties not mentioned were evidently silently considered to have survived the war. At the beginning of the Spanish-American War the Spanish government issued a decree declaring that "the state of war, existing between Spain and the United States, brings about the annulment of the treaties of peace and amity, and of all the other accords, treaties, or conventions, until now in force between the two countries." The practice of Spain during the war was, however, not in accord with this extreme

pronouncement, and, in fact, recognized the continued existence of individual treaties. Moreover, the language of the new treaty of amity concluded between the United States and Spain on July 3, 1902, is not consistent with the idea of the decree of 1898. The latter may indeed be looked upon as a shot in the air rather than as a well-considered statement of a policy definitely asserted and adhered to. A similar situation existed in almost every case where, in recent negotiations, the general principle of the absolute annulment of treaties through war was announced.

It is apparent that although negotiators representing their countries in peace conferences are still much inclined to take the ground that war has annulled all treaties, this is due to extreme caution. As the law on the point is not as yet entirely and definitely settled, it is considered safer to assume that anterior treaties have been annulled and to restore their force by a special statement in the treaty of peace. But, aside from such declarations, the actual practice of states is inspired by a different principle; and even the negotiations and treaties of peace when closely analyzed reveal a state of facts different from the absolute theory. As a matter of fact, many kinds of treaties, especially those affecting the rights and activities of private individuals, are tacitly allowed to revive as soon as diplomatic relations are reestablished; in many cases, as we shall see, they have even been allowed practically to continue in force and operation during the war.

Usually the argument for the continued existence of such treaties is based upon the consideration that they affect the rights of private individuals, and that, therefore, they should not be dealt with in the same manner as are general treaties of alliance which touch the political action of states. However, in the case of conventions of international unions, another element enters which makes their continued existence logical and proper. They are not arrangements between two powers, but acts carefully considered and adopted by a large number of nations, which at times assume the character and dignity of laws decreed by the powers for the entire world or a large part of it. Now, while it is conceivable that through strained relations between two members of such a union their interchange of mutual services under the treaty may be for a while suspended, it would be entirely illogical to hold that by engaging in war they abrogate the

convention and cease to be members of the international union. Nobody would hold that powers at war do not have a perfect right to send representatives to the conferences of the international unions of which they are members. It has been clearly established that governments who have no diplomatic relations with each other can, nevertheless, with perfect propriety participate in the business of international unions to which both may belong. Nor will such action be looked upon in the light of a direct political relation or a mutual diplomatic intercourse between them. These principles being accepted, it follows that the convention upon which this membership rests is not annulled by warfare, but is simply partially suspended as between the belligerents. Any other solution would be untenable, also for the reason that no state certainly can be supposed to have the intention, by engaging in war with some one power, of cutting itself off from all friendly relations with the rest of the world. Every reason, therefore, exists for excepting the conventions of unions from the rule that a declaration of war effects the annulment of treaties. This solution is also accepted by authorities. Thus, M. Renault says : " When war comes about between two members of a union, it would seem that no one would think of contending that the treaty of union has, like some other conventions, been annulled or suppressed, and that it is not put in force again by the establishment of pacific relations." With reference to the Franco-German War, he says : " It is likely that the treaty constituting the telegraphic union had been considered as restored in force as soon as diplomatic relations had been reëstablished between the two countries. This is true also of the postal conventions ; as soon as the necessities of war permitted, they were in force again." Pillet considers that the state of war is not inconsistent " with the conservation of certain legal relations between the enemy states, and that annulment strikes only the treaties whose enforcement would be incompatible with the existence of hostilities." Though their validity continues, the execution of such treaties may of course be interfered with, and, as a matter of fact, is usually suspended during war. It is, however, of the highest importance that it should be clearly established that nations may even during war retain legal relations with each other. Though at first all treaties not abrogated may be considered as suspended with regard to their execution, as war continues it will be found convenient to have relations of

various kinds even with the subjects of the other belligerent. Through the growing volume of such relations the ultimate reestablishment of peace is made to seem constantly more natural. Under the conditions of modern life no state can isolate itself permanently even from its worst enemy. The recognition of the fact that certain treaty relations subsist, though in a state of temporary suspension, makes the transition from peace to war less abrupt and more in agreement with the nature of actual affairs.

The principles here developed have, as a matter of fact, been quite generally recognized, — implicitly, if not expressly, — through the action of governments during and after recent wars. Thus while the treaty of Frankfurt, 1871, specifically revives the conventions with respect to the international railway service and to literary and industrial property, the telegraphic convention is not mentioned, but it was in fact observed again as soon as diplomatic relations were established. The international postal service between Germany and France was also reestablished immediately after the armistice by the convention of Rheims, March 17, 1871. Later negotiations bring out the fact that treaties on extradition and the execution of judgments were considered to subsist after the war. During the Spanish-American War the United States government recognized the continued existence of the universal postal convention, which guarantees the right of transit of mails throughout the territories of the countries forming the union. With respect to copyright during this war, Secretary Hay declared that "while the government of Spain has maintained that all treaties with the United States were terminated by the recent war, it is thought that it would hold that its general laws granting copyright were at most only suspended, so far as American citizens were concerned, during the period of the existence of the war." Of course, on the other hand, many cases may be found in which postal and telegraphic conventions were in terms reestablished through the treaties of peace; such was the case in the peace negotiations between Turkey and Greece in 1897; the language used here was such as to imply that the telegraphic treaty had been entirely annulled. It is probable, however, as pointed out above, that such illogical views of the situation are due rather to an extreme caution in making sure that all proper treaty relations are reestablished than to an absolute belief in the actual annulment of all such relations during war. If it is ascertained

that as a matter of general practice at the conclusion of wars such relations are immediately reestablished, the theory may seem of secondary importance. Yet for purposes of clear reasoning it is essential to insist upon the principle that conventions of unions cannot be logically said to have been annulled by the mere fact that war exists between two parties to the union.

Having considered the theory and practice with respect to the annulment or suspension of treaties, let us now inquire concerning the practice of belligerents as affecting international services and rights, such as postal and telegraphic communication, extradition, copyrights, and sanitary protection.

It is important to note at the beginning that exactly those instrumentalities which are most essential to international intercourse, namely, telegraphic service, postal communication, and railways, are also most likely to be made use of by belligerents for military purposes. In modern warfare, with the vast areas covered by military operations, especially in the case of colonial empires, communication by mail and telegraph is an essential instrument of war. The first desire of every belligerent, therefore, will be to use these instruments for his own purpose, but also to prevent, as far as possible, their use by his adversary. This is the first main consideration which stands in the way of allowing postal and telegraphic communication to go on as uninterruptedly in times of war as in peace. The other principle is that to a large extent the ordinary economic intercourse between the subjects of the two belligerent states is interrupted, because it is considered incompatible with the state of war, as involving a certain disloyalty of subjects to their own sovereign and a possibility of action harmful to the latter. With the development of modern international activities and with the changed conception of war, the principle of nonintercourse has however lost considerably in force; and there is a strong tendency favorable to allowing ordinary commercial and industrial enterprises, in so far as they are not inconsistent with hostilities, to go on between the private citizens of the two belligerent states. Great Britain and the United States have been backward in giving assistance to this tendency, not because of any hostility to the newer view, but because of the rule of the common law which interdicts commercial intercourse between subjects of states which are at war with each other.

If the principle of nonintercourse stood alone, it would undoubtedly soon be overcome and displaced by a more liberal policy, due to the growing importance of uninterrupted trade relations among all parts of the world. But the first consideration indicated, the necessity of protecting the efficiency of military operations, is not so readily superseded, and it is from this point of view that the services dealt with in international unions are usually interfered with or interrupted during times of war.

According to the old conception of war it was believed that all postal and telegraphic communication between the enemy states is cut off. However, as war is no longer considered a struggle between citizens, but between states, it is now generally admitted that only the correspondence of a belligerent state and its armies should be interfered with. There are, indeed, also older precedents. As early as 1296, Philip le Bel authorized the messengers of the University of Paris to continue their services with Flanders even during war.¹ In recent times a number of treaties have been made, providing for a continuance of mail service even during war. Thus the convention between the United States and Mexico, July 1, 1887, provides that, should there be war between the two countries, postal communication is to continue without interruption until one of the countries has advised the other of its desire to modify this arrangement. Six weeks after the reception of such notice postal interchange must cease. France has made similar treaties with several of her neighbors. Thus the Anglo-French convention of June 14, 1883, provides that, in case of war between the two nations, the mail boats shall continue their communication without hindrance until notification by one of the two governments, in which case they shall be allowed to return freely into their respective ports.

On principle most authorities now hold that postal and telegraphic communications are not *ipso facto* interrupted by war and that they persist wherever the interests of war do not oblige the enemy to suspend them. It is, of course, desirable from the point of view of each of the belligerents that these services should continue as far as is possible, and that restrictions should only be made when clearly required for military reasons. No one, however, disputes the right of a belligerent state to make such restrictions as it may consider necessary.

¹ Rolland, De la correspondance postale.

When a belligerent has occupied parts of the territory of the state with which it is at war, it has a right to seize official correspondence and exercise a strict control over that of private persons. Telegraphic communications, too, may be interrupted even by cutting the wires. But in so far as possible, the occupying state will continue the postal services for the benefit of the local residents as well as of neutral countries. The mails of the latter must of course not be interfered with. A project was suggested in 1877, according to which neutrals in case of war were to establish a service of mail couriers who might enter and traverse the territories of belligerents, even those under hostile occupation. Such an arrangement would of course be designed primarily for the carrying of mails between neutral countries ; it would be particularly a transit service. This suggestion has, however, never been put into execution on account of the difficulty and expense of organizing temporary mail routes. It is generally understood that the agents of postal and telegraphic services should be dealt with entirely as persons connected with a civil administration. Even though messages are carried in balloons, messengers should not be treated as spies, although attempts to do so have been made repeatedly. The convention of St. Petersburg, concerning international telegraphic service, provides that the contracting powers reserve the right to stop any message which may seem dangerous to the security of the state ; each government also reserves the right to suspend partially or entirely all telegraphic communication, but notice of such suspension must immediately be given to each of the contracting states.

Difficult questions arise in connection with submarine cables in time of war. The cable system is of international importance, and in its maintenance not only the belligerents but other nations as well are interested. A belligerent who for military purposes cuts a cable or otherwise interrupts cable communication is, therefore, interfering with the general business affairs of the world. For these reasons it has been repeatedly tried to give cables international protection by declaring them inviolable or neutralizing them. A convention entered into between France, Brazil, Portugal, Italy, and Hayti, in May, 1864, provides that the contracting states engage themselves "not to cut or destroy in times of war the cables laid by Ballestrini [the French oceanic cable system], and to recognize the neutrality of the telegraphic

line." A project proposed by the United States in 1869, when the great North American cables had been laid, contained similar dispositions. The adoption of this principle has, however, not thus far been possible on account of the reluctance which states feel against allowing so important an instrument to remain where it may be used by an enemy in war. A solution was suggested by the Austro-Hungarian government in 1872, to the effect that cables should be protected by the institution of a commission composed either of representatives of the belligerent states, or of neutrals, or both, with power to supervise the operations of submarine telegraphy. In actual practice in recent wars, hostile cables, or cables belonging to neutrals but landed upon hostile territory, have frequently been cut by belligerents. Thus, in the Spanish-American War the American forces cut nearly all of the cables landed in Cuba, while strictly controlling those connecting Cuba with the United States.

The Institute of International Law, in 1902, discussed these problems, and finally adopted the following rules (19 voting in the affirmative, 6 in the negative, 4 not voting) concerning cables in war time :

- I. A submarine cable connecting two neutral territories is inviolable.
- II. A cable uniting the territories of two belligerents or different parts of the territory of one of the belligerents may be cut anywhere, except in territorial waters or in neutralized waters belonging to a neutral country.
- III. A cable connecting a neutral country with the territory of one of the belligerents cannot be in any case cut in territorial waters or in neutralized waters belonging to a neutral territory.
- On the high sea such cable cannot be cut unless there is an effective blockade, and within the limits of the lines of this blockade, under condition of restoring the cable within the shortest time possible. Such cable may always be cut upon the territory and within the territorial waters belonging to an enemy country up to a distance of three marine miles from the low-water mark.
- IV. It is understood that the liberty of a neutral state to transmit dispatches does not imply the right to use a cable or to permit its use manifestly for the purpose of lending assistance to one of the belligerents.
- V. In the application of the preceding rules there is to be no difference between the cables of a state or cables belonging to private owners, nor between the cables of the enemy and those which are the property of neutrals.

According to these rules, as will be seen, the only protection which is afforded cables is that they may not be cut in the territorial waters of a neutral country, nor upon the high sea, except in areas where there is an effective blockade; and that cables connecting neutral

territories are inviolable. The American Naval War Code of 1900¹ contained the following rules :

ARTICLE 5

The following rules are to be followed with regard to submarine telegraphic cables in time of war, irrespective of their ownership :

(a) Submarine telegraphic cables between points in the territory of an enemy, or between the territory of the United States and that of an enemy, are subject to such treatment as the necessities of war may require.

(b) Submarine telegraphic cables between the territory of an enemy and neutral territory may be interrupted within the territorial jurisdiction of the enemy.

(c) Submarine telegraphic cables between two neutral territories shall be held inviolable and free from interruption.

As will be seen, they coincide in principle with the rules of the institute, with the exception that they do not contain the provision regarding the cutting of cables on the high seas in the area of the blockade. When the code was discussed in the Naval War College in 1903, the following formulation was suggested :

ARTICLE 5

Unless under satisfactory censorship or otherwise exempt, the following rules are established with regard to the treatment of submarine telegraphic cables in time of war, irrespective of their ownership :

(a) Submarine telegraphic cables between points in the territory of an enemy, or between the territory of the United States and that of an enemy, are subject to such treatment as the necessities of war may require.

(b) Submarine telegraphic cables between the territory of an enemy and neutral territory may be interrupted within the territorial jurisdiction of the enemy, or at any point outside of neutral jurisdiction if the necessities of war require.

(c) Submarine telegraphic cables between two neutral territories shall be held inviolable and free from interruption.

This version would leave the belligerents free to cut cables even on the high seas if the necessities of war required. Such a procedure, however, would in most cases be found very difficult to carry out, unless special instruments for the raising of cables were available, and the belligerent were in possession of detailed maps indicating the exact location of cables on the bottom of the sea.

Communication by wireless telegraphy also gives rise to many problems during war. The law respecting it has not as yet been settled ; but very extensive claims have been made in behalf of belligerents

¹ This code was withdrawn by order of the Navy Department, in February, 1904.

because of the ease with which wireless communication may be used for military purposes. The Institute of International Law, in its session of 1906, adopted the following rules on this matter :

PRELIMINARY DISPOSITIONS

ART. I. The air is free. States have with respect to it in times of peace and of war only the rights necessary for their conservation.

ART. II. In default of special dispositions, the rules applicable to ordinary telegraphic correspondence are applied also to wireless telegraphy.

PART I. STATE OF PEACE

ART. III. Every state has a right, in a measure necessary for its security, to prohibit, above its territory and its territorial waters and as high up as shall be necessary, the passage of Hertzian waves, whether they are sent from an apparatus belonging to a state or a private apparatus, whether placed on the land, on board of a ship, or in a balloon.

ART. IV. In case of the prohibition of wireless correspondence, the government must immediately advise the other governments of such a decree.

PART II. STATE OF WAR

ART. V. The rules admitted for times of peace are in principle also applicable in times of war.

ART. VI. Upon the high sea, within the zone which corresponds to the sphere of action of their military operations, the belligerents may forbid the sending of waves, even by a neutral subject.

ART. VII. Individuals who, notwithstanding the orders of a belligerent, engage in the transmission or the receiving of wireless messages between the different parts of an army, or of a belligerent territory, shall not be considered as spies, but must be treated as prisoners of war when captured. A different rule holds when the correspondence has been sent under false pretexts.

The carriers of messages transmitted by wireless telegraphy may be treated as spies when they employ deception and ruse.

Neutral ships and balloons, which by their communications with the enemy may be considered as being placed in his service, may be confiscated together with their messages and their apparatus. Neutral subjects, ships, and balloons, in cases where it is not established that their correspondence was designed to furnish to the adversary information relative to the conduct of hostilities, may yet be removed from the zone of operations and their apparatus may be seized and sequestered.

ART. VIII. A neutral state is not obliged to prohibit the passage from its territory of Hertzian waves in the direction of a country at war.

ART. IX. A neutral state has a right and the duty to close or to take under its administration an establishment of a belligerent state which it may have authorized to operate upon its territory.

ART. X. Every prohibition of communicating by wireless telegraphy issued by the belligerents must be immediately notified by them to the neutral governments.

As will be seen, very considerable latitude is given to belligerents by Article VI, in that they are authorized to forbid the sending of telegraphic messages upon the high seas even by a neutral when within the zone of military operations. This is the most extreme extent to which authority has been attributed to belligerents in modern international legislation in matters affecting neutrals. The rules proposed, however, also contain the provision that the agents of wireless telegraph companies shall not be treated as spies but as prisoners of war. During the siege of Port Arthur, Alexieff had issued an order making the sending of wireless messages from the neighborhood of the Russian forces equal to espionage. This has been considered as unduly rigorous, and is therefore not followed in the rules laid down by the institute.

Another subject requiring special attention is the treatment of mail ships by belligerents. We have already cited the treaties made by France and by the United States in which postal communication is accorded protection in case of war. These treaties refer to ships carrying on the mail service directly between the belligerent countries. *A fortiori*, it is, of course, desirable that mail ships navigating between a belligerent and a neutral country should be considered inviolable or that, at most, there should be accorded a right of inquiring whether any military correspondence is being transported. The Institute of International Law has adopted the principle that neutral ships shall not be arrested and visited when the commissioner of the government whose flag they carry declares in writing that they transport neither dispatches nor troops for the enemy nor contraband of war. In any event, only official correspondence can be seized, all private correspondence being inviolable.

In practice the mails of neutrals have been generally given scrupulous protection in times of war. During the Mexican War, while in occupancy of Vera Cruz, the United States allowed British mail boats to pass in and out freely. During the Spanish-American War the American government treated the universal postal convention as existing in full force even between the United States and Spain, since the right of transit had been guaranteed throughout the entire territory of the countries of the union. The treaty was held "to insure the safe transit under any conditions of closed mails passing from one country of the postal union to another," but to have "no bearing on mails

passing from one post office to another in the same country.”¹ President McKinley’s proclamation of April 26, 1898, contained the provision that the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade. During the Franco-Prussian War the French government gave orders to accept the word of the official in charge of the correspondence on a neutral mail steamer as to the absence of any communications involving information to the enemy. The British, during the Boer War, did not interfere with German mail steamers communicating with South Africa. The practice of Russia during the Japanese War was, however, far from being in accord with these more liberal principles and practices. Thus Russian vessels repeatedly stopped neutral mail steamers in order to search for Japanese mail. Nor did they confine their interference to official correspondence. On the contrary, they seemed to go on the principle that any private correspondence going to Japan could also be seized.²

The treatment to be accorded mail steamers has now been more adequately defined and established on a liberal basis in the Hague convention of 1907 on the Right of Capture in Maritime War, which contains the following provisions :

CHAPTER I — POSTAL CORRESPONDENCE

ARTICLE I

The postal correspondence of neutrals or belligerents, whatever its official or private character may be, found on the high seas on board a neutral or enemy ship, is inviolable. If the ship is detained, the correspondence is forwarded by the captor with the least possible delay.

The provisions of the preceding paragraph do not apply, in case of violation of blockade, to correspondence destined for or proceeding from a blockaded port.

ARTICLE II

The inviolability of postal correspondence does not exempt a neutral mail ship from the laws and customs of maritime war applying to neutral merchant ships in general. The ship, however, may not be searched except when absolutely necessary, and then only with as much consideration and expedition as possible.

These provisions constitute a great advance in the law of international communication, especially in so far as they relate to official

¹ Moore, *Digest of International Law*, Vol. VII, p. 257.

² Lawrence, *War and Neutrality in the Far East*.

correspondence. They virtually assure the continuance of communication by mail throughout a war. That it should have been possible to adopt such a treaty is a testimony to the improvement of international relations and to the acknowledged importance of uninterrupted intercourse. The exemption of the mail service from military interference was further made acceptable by the fact that other and more rapid means of communication are now chiefly relied upon by belligerents for purposes of military intelligence.

What is true of the unions dealing with activities that are readily made use of in military operations may be considered a fortiori to apply to those which affect only interests and relations outside of the realm of war. Concerning these it could be urged with even less reason that war annuls the conventions upon which they rest. The protection of the health of persons and animals against the importation of diseases, the operations of the agricultural institute, the suppression of African slavery and of the white slave trade, the regulations of the monetary system, and the protection of private property in copyrights and patents are all matters which have no direct relation with war, and in the conservation of which during war every civilized state must be interested, even from the point of view of its own special affairs. The conventions by which these unions are formed do not mention the eventuality of war; while the means by which they can be abrogated or annulled are definitely fixed, war is not spoken of in this connection. As a matter of practice, these relations and conventions have always been looked upon as not dependent for their existence upon the maintenance of peaceful relations among all the members. States do not lose their rights of membership by engaging in war with one another. In the conferences and governing boards of international unions the representatives of warring nations may meet on a friendly footing without in any way compromising the belligerent position of their respective states. Thus the work of the great international unions continues without interruption, even though war may exist between individual members. The hygienic bureau at Paris, the sanitary councils at Constantinople and Alexandria, the international agricultural institute, the bureau of patents and copyrights, the Pan-American Union, these and others, all continue their operations under the conventions in times of war as well as in times of general peace.

The doctrine of nonintercourse, however, does involve, to a certain extent, the cessation of direct relations between the two belligerent governments and their subjects even in matters relating to the international unions. During the Spanish-American War it was held that the mutual arrangements for copyrights were suspended, but also that when a treaty of peace should have been concluded, it would be "entirely proper for the librarian of Congress to admit Spanish subjects to the same copyright privileges that they enjoyed prior to the declaration of war."¹

The permanence of international relations will be preserved intact in a constantly greater number of instances as the principle becomes more fully established that war is not a struggle between individuals, as even now the belligerent states retain their membership in the international unions. It will become possible to maintain direct relations along certain lines, such as the postal service and the protection of private rights, even with the other belligerent and its subjects. Every sound consideration favors this policy, which is already partially applied by many nations. The needs of military efficiency do not require an absolute suspension of these relations. Through maintaining them, a belligerent nation is only utilizing the benefit of its membership in international unions to the fullest extent. Moreover, it is desirable that there should be a field within which even the subjects of two belligerents could meet in amity. During the international scientific congress at St. Louis, in 1904, a Japanese delegate declared that this was one of the few occasions and places where Russians and Japanese could meet in friendship at this time. But the maintenance of such relations which do not interfere with the military effectiveness of either party is also most advantageous, for the reason that they make the transition from war to peace easier and more natural. The sharp contrast between absolute hostility and profound peace is no longer in accord with the conditions of the world we live in. No war is strong enough to break up entirely all relations which bind two countries together. The recognition of this fact, by allowing certain peaceful relations to be maintained even while hostilities are going on, is a far more just and natural treatment of the matter than would be the rigid enforcement of the old uncompromising theory of absolute nonintercourse.

¹ Opinions of the Attorney-General of the United States, Vol. XXII, p. 268.

Conclusion. The international organization that is being created in our era is not a force hostile to national life and development. Nations will not readily give up that ultimate liberty of political movement and self-determination in political action, that national independence which has been won through great and long-continued sacrifices. The principle of independent nationalism is serving a purpose in allowing different aspects of human nature and human capacity to work themselves out, thus enriching the sum total of civilized forces. But the growing unity of the world is a fact which must also be recognized ; it rests upon the technical advances made in communication and industrial processes during the last hundred years. The relations thus created among all branches of mankind have to be taken into account in national policy. While preserving intact their ultimate freedom of action, nations cannot therefore afford to stand aloof from the movement upon which their own efficiency and the welfare of their citizens depend. These universal factors have in our era become of prime importance. They have transformed the character of diplomacy. They are mitigating the rigors of war and are filling the entire world with that spirit of coöperation upon which real advance is dependent. In former ages mankind freed itself from the danger of overpopulation by terrible bloodlettings. The advances of modern science will make it possible for human beings to exist upon the surface of the globe in greatly increased numbers and under the happiest conditions, if only the works of civilization can be carried through by common accord of the nations. It is here that the real choice is to be made. The question is whether the energies of humanity are to be expended in old-fashioned, cruel, and universally harmful warfare, or are to be directed into the ample field of constructive work for the betterment of the conditions under which men live throughout the world. When this consideration is clearly understood, the true meaning and importance of international organization in the form of public unions will be grasped, and it will be seen that in this direction lies the highest promise for the betterment of the conditions of civilized life.

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